

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Criminal Docket
	)	
JOHN HENRY SCHNEIDER,	)	No. CR 17-77-BLG-SPW
	)	
Defendant.	)	

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Transcript of Sentencing

Heard in Snowy Mountains Courtroom  
James F. Battin United States Courthouse  
2601 Second Avenue North  
Billings, Montana  
Wednesday - August 15, 2018  
1:31 p.m. - 3:20 p.m.

BEFORE THE HONORABLE SUSAN P. WATTERS

UNITED STATES DISTRICT JUDGE

REBECCA M. SABO, RPR, CRR  
United States Court Reporter  
James F. Battin United States Courthouse  
2601 Second Avenue North, Room 4209  
Billings, Montana 59101  
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Proceedings recorded by machine shorthand  
Transcript produced by computer-assisted transcription

APPEARANCES

PRESENT ON BEHALF OF THE PLAINTIFF,  
THE UNITED STATES OF AMERICA:

Colin M. Rubich  
Assistant U.S. Attorney  
OFFICE OF THE U.S. ATTORNEY  
2601 Second Avenue North, Room 3200  
Billings, Montana 59101

PRESENT ON BEHALF OF THE DEFENDANT,  
JOHN HENRY SCHNEIDER:

John E. Smith, Esq.  
SMITH & STEPHENS  
P.O. Box 7337  
Missoula, Montana 59807-7337

## PROCEEDINGS

(Open court.)

(Defendant present.)

THE COURT: Please be seated.

Emily, would you please call the next matter on the calendar.

THE CLERK: Yes, Your Honor.

The Court has set aside this time to hear the matter of CR 17-77-BLG-SPW, United States versus John Henry Schneider. This is the time set aside for a sentencing.

THE COURT: For the record, Colin Rubich appears on behalf of the government, John Smith appears on behalf of the defendant, and the defendant is present.

I have received and reviewed the presentence report, the sentencing memoranda filed by counsel, the letters and the victim impact statements that were provided.

Mr. Rubich, did you receive and review the Presentence Investigation Report?

MR. RUBICH: I did, Your Honor.

THE COURT: And do you have any objections to that report?

MR. RUBICH: No, Your Honor.

THE COURT: Are you recommending that the defendant's offense level be decreased by 2 levels for acceptance of responsibility pursuant to Section 3E1.1(a), and do you move

01:32:15PM 1 for an additional 1-level decrease for timely notification of  
01:32:19PM 2 plea pursuant to Section 3E1.1(b)?

01:32:21PM 3 MR. RUBICH: I recommend and I do so move.

01:32:24PM 4 THE COURT: That request and motion are granted.

01:32:27PM 5 Mr. Smith, did you receive the presentence report?

01:32:32PM 6 MR. SMITH: Yes, I did, Judge.

01:32:33PM 7 THE COURT: Did you have an opportunity to go through  
01:32:34PM 8 that report in its entirety with Mr. Schneider?

01:32:37PM 9 MR. SMITH: Yes, I did.

01:32:39PM 10 THE COURT: And do you have any objections to the  
01:32:40PM 11 presentence report?

01:32:41PM 12 MR. SMITH: We have no objections.

01:32:42PM 13 THE COURT: Thank you.

01:32:43PM 14 I will adopt the presentence report without objection  
01:32:46PM 15 and rely on it for purposes of calculating the advisory  
01:32:50PM 16 sentencing guidelines.

01:32:51PM 17 I will accept the plea agreement that has been filed  
01:32:54PM 18 in this case, and I will now summarize the applicable  
01:32:58PM 19 punishments for the offense under both the United States  
01:33:02PM 20 Sentencing Guidelines and the applicable statute.

01:33:04PM 21 With regard to the guidelines, the adjusted offense  
01:33:06PM 22 level is 20. And we arrive at that by beginning with a base  
01:33:12PM 23 offense level of 6, adding 12 levels for the reason that the  
01:33:16PM 24 loss exceeded \$250,000, and then adding an additional 2 levels  
01:33:22PM 25 for the reason that the offense involved the misrepresentation

01:33:26PM 1 or fraudulent action during a bankruptcy proceeding. Then  
01:33:32PM 2 subtracting 3 levels for acceptance of responsibility and  
01:33:35PM 3 timely notification of plea, we arrive at a total offense level  
01:33:38PM 4 of 17. Dr. Schneider has zero criminal history points, so his  
01:33:44PM 5 criminal history category is I. The resulting advisory  
01:33:47PM 6 guideline range is 24 to 30 months imprisonment.

01:33:51PM 7 Under the guidelines, Dr. Schneider is not eligible  
01:33:54PM 8 for probation, he is subject to one to three years of  
01:33:57PM 9 supervised release, a fine of 5,000 to \$50,000, and a special  
01:34:04PM 10 assessment of \$100, and restitution is applicable under the  
01:34:08PM 11 guidelines.

01:34:08PM 12 For the charge of Count III, Concealment of  
01:34:12PM 13 Bankruptcy Assets, in violation of 18 United States Code  
01:34:17PM 14 Section 152(1), the maximum punishment is five years  
01:34:21PM 15 imprisonment, the maximum fine is \$250,000, no more than three  
01:34:27PM 16 years of supervised release, and the \$100 special assessment.  
01:34:31PM 17 Under the statute, Dr. Schneider is eligible for probation for  
01:34:36PM 18 a period of one to five years, and, again, restitution is  
01:34:39PM 19 applicable.

01:34:39PM 20 Mr. Rubich, do you agree that's an accurate statement  
01:34:41PM 21 of the statutory and guideline provisions?

01:34:43PM 22 MR. RUBICH: I do, Your Honor.

01:34:44PM 23 THE COURT: Do you also agree, Mr. Smith?

01:34:46PM 24 MR. SMITH: Yes, I do, Judge.

01:34:49PM 25 THE COURT: And the restitution that, I believe, both

01:34:52PM 1 parties have agreed to is the amount of \$308,945, correct?

01:34:58PM 2 MR. RUBICH: That is correct, Your Honor.

01:34:59PM 3 THE COURT: And your client agrees with that?

01:35:01PM 4 MR. SMITH: Yes.

01:35:02PM 5 THE COURT: Okay.

01:35:03PM 6 Mr. Rubich, are there any persons here who would be  
01:35:06PM 7 considered a victim who wish to be heard before sentencing?

01:35:09PM 8 MR. RUBICH: Yes, Your Honor, there are four. The  
01:35:11PM 9 first is the trustee of the bankruptcy estate, which is Joe  
01:35:15PM 10 Womack; the second is an attorney on behalf of some of the  
01:35:20PM 11 plaintiffs named Jon Moyers; and two individuals involved in  
01:35:22PM 12 one of the malpractice suits, Mallory Monaco and Judy Monaco.

01:35:27PM 13 THE COURT: Okay. Please call your first witness.

01:35:28PM 14 MR. RUBICH: Your Honor, I -- it wasn't my intent to  
01:35:28PM 15 call witnesses, Your Honor.

01:35:28PM 16 THE COURT: Oh.

01:35:30PM 17 MR. RUBICH: I was going to allow them to make a  
01:35:34PM 18 statement, as is required.

01:35:36PM 19 THE COURT: Well, call your first one up, is what I  
01:35:40PM 20 really meant to say.

01:35:40PM 21 MR. RUBICH: Yes, Your Honor.

01:35:40PM 22 THE COURT: Okay.

01:35:41PM 23 MR. RUBICH: Joe Womack will be first to be heard.

01:35:45PM 24 THE COURT: Okay.

01:35:51PM 25 JOE WOMACK: I'm not familiar with how the

01:35:53PM 1 proceedings go in this matter, Your Honor. Do you just wish me  
01:35:56PM 2 to make a statement to the Court regarding my views on what's  
01:36:00PM 3 going on here today?

01:36:02PM 4 THE COURT: This is a victim impact statement, so --  
01:36:06PM 5 and I did read the written statement that you provided to the  
01:36:10PM 6 government. But if you'd just identify yourself by name and  
01:36:14PM 7 your relationship to the case, and then tell me how the case  
01:36:18PM 8 has impacted you either personally or professionally.

01:36:21PM 9 JOE WOMACK: Okay. Thank you, Your Honor.

01:36:22PM 10 THE COURT: Mm-hmm.

01:36:23PM 11 JOE WOMACK: Yes. My name is Joe Womack, I'm the  
01:36:27PM 12 Chapter 7 bankruptcy trustee that was assigned to the  
01:36:31PM 13 bankruptcy -- Chapter 7 bankruptcy that was filed by  
01:36:37PM 14 Dr. Schneider back in 2014.

01:36:40PM 15 In terms -- I have laid out pretty much my position  
01:36:48PM 16 in full in the letter that you have already read, so I'm not  
01:36:52PM 17 going to go through and reiterate everything that is in there.  
01:36:57PM 18 There are a couple of points that I did want to add, or make.

01:37:03PM 19 As I've been a trustee now -- a bankruptcy trustee  
01:37:06PM 20 since about 1994 here in Montana, I know that many people don't  
01:37:14PM 21 really like bankruptcy or the process. They think it's a way  
01:37:18PM 22 for people to get out of paying their debts and obligations,  
01:37:23PM 23 and they disagree with that. I think most individuals think  
01:37:26PM 24 that there's a moral obligation as well as a legal and ethical  
01:37:31PM 25 one to pay obligations that they have, so they disagree with

1 the idea that with bankruptcy they can have a discharge of  
2 their obligation to pay certain debts. So I know that the  
3 process of the bankruptcy system is not necessarily popular  
4 with the American public.

5 I will say, though, that I think it serves important  
6 functions and a service to the people in the United States, but  
7 the -- but that benefit that exists there for people comes with  
8 obligations. It's not a right, it's a privilege that's granted  
9 by the government. And with that privilege comes an obligation  
10 on the part of those who participate in the program to be  
11 completely honest and forthright in their filing so that any  
12 assets that they have are utilized to pay creditors as set out  
13 under the law.

14 The integrity of the bankruptcy system relies on the  
15 enforcement of that basic fundamental principle. And I think  
16 what we have seen here today with Dr. Schneider is a complete,  
17 utter abuse of the bankruptcy process, and he has admitted that  
18 he deliberately, fraudulently concealed over \$300,000 from the  
19 bankruptcy estate. I think that it is important that he be  
20 made an example for what he has done. I think it's important  
21 that the public know that this is not a matter that is taken  
22 lightly by the federal government. That if you're going to  
23 file bankruptcy, if you're going to seek the benefits of the  
24 bankruptcy system, you need to adhere to what is required for  
25 you to do.



1 In this case, particularly, the people that have been  
2 harmed -- I mean, I'm the trustee for the estate, so that I'm  
3 essentially the victim, but with the estate are the claimants,  
4 people who have been hurt by this because they were his  
5 patients. He had a doctor-patient relationship with these  
6 people. He has admitted that he committed malpractice against  
7 those people. He admitted that the estate of Russell Monaco,  
8 that Mr. Monaco has suffered \$3 million in damages at his hands  
9 by prescribing opioids that resulted in Mr. Monaco's death.

10 These are real human beings. These are not faceless  
11 credit card companies or corporations who can absorb those kind  
12 of damages easily. Those are the kind of people that we  
13 usually see that are victims in a bankruptcy case. That is not  
14 the case here. These are individuals that have suffered at his  
15 hands as a neurosurgeon when he committed this malpractice.  
16 And when they went to try to get compensation for that, they  
17 found out that he had basically taken every penny that had he  
18 in his self-insured malpractice fund and taken every penny out  
19 of it and had put it -- had taken it to pay a slander/libel  
20 claim that he had made against a doctor in Cody, Wyoming, named  
21 Jimmie Biles. So he looted that malpractice fund that he had  
22 and then used it to pay this slander claim, and then there was  
23 no money to pay these malpractice claims that he admits he  
24 committed.

25 Sherry Lee is here today, the family of Russell

01:41:21PM 1 Monaco, I understand, is here today, and they'll speak here to  
01:41:25PM 2 the Court, but they are real people, Your Honor, that have been  
01:41:29PM 3 harmed by this man's actions. And I think that it's egregious.

01:41:37PM 4 As a result of his concealment, the bankruptcy estate  
01:41:41PM 5 had to go forward and hire attorneys on a contingency fee  
01:41:46PM 6 basis, because there was no money in this estate. Nothing. He  
01:41:49PM 7 went from \$12 million in net assets, according to his financial  
01:41:53PM 8 statements several years earlier, to a net worth of zero when  
01:41:58PM 9 he filed this bankruptcy.

01:42:01PM 10 We had to go and try to unravel all of those things  
01:42:04PM 11 and pursue these assets that he concealed, including the  
01:42:09PM 12 308,000 that you're talking about restitution for here today.  
01:42:13PM 13 And as a result of that, the bankruptcy estate did recover  
01:42:15PM 14 assets, but we also incurred over 600,000 in attorneys' fees in  
01:42:22PM 15 order to go after this guy because of his scheme.

01:42:25PM 16 I don't know -- I heard you talk about the sentencing  
01:42:30PM 17 guidelines. I don't know how that plays in with victim impact  
01:42:36PM 18 statements. But I can tell you that I truly believe that  
01:42:42PM 19 Dr. Schneider needs to feel the full impact of his actions,  
01:42:48PM 20 that he needs to be sentenced to the maximum here, to the full  
01:42:52PM 21 five years, if that is possible. He needs to have the full  
01:42:56PM 22 fine imposed. If he can be ordered to repay restitution for  
01:43:02PM 23 the attorneys' fees that the bankruptcy estate has suffered of  
01:43:07PM 24 over \$600,000, as well as the 308,000, I think that that should  
01:43:13PM 25 be done and so that we've got some chance of full compensation

01:43:17PM 1 here.

01:43:18PM 2           And in terms of the jail time, the time he spends in  
01:43:22PM 3 prison, I've come to know Dr. Schneider fairly well through  
01:43:28PM 4 these proceedings. I don't believe that he has any regrets  
01:43:31PM 5 about what he did except that he got caught. And I think that  
01:43:34PM 6 that is the only thing that punishment is going to act as a  
01:43:41PM 7 deterrent to him, not only serve as an example to others, but  
01:43:45PM 8 as a deterrent to him to engage in bad behavior in the future.

01:43:52PM 9           And in terms of restitution, I really think that  
01:43:55PM 10 there has to be a strong incentive for him to go to the people  
01:43:59PM 11 that he transferred all of his assets to, to try to get money  
01:44:04PM 12 from them to make restitution. Because I believe -- and I  
01:44:09PM 13 haven't seen current financial statements or reports, but after  
01:44:14PM 14 dealing with this, this guy for three and a half years, what I  
01:44:19PM 15 see is someone who will put himself as an employee of one of  
01:44:25PM 16 his shell corporations, working for a minimal amount of money,  
01:44:29PM 17 that will allow him then to make minimal restitution payments.  
01:44:34PM 18 That's what I believe.

01:44:35PM 19           Now, I hope I'm wrong. I hope that the system can  
01:44:39PM 20 provide an incentive or that he can fess up and provide  
01:44:43PM 21 restitution at a level that is meaningful to Sherry Lee, who is  
01:44:51PM 22 one of his -- is here today, is one of the people that suffered  
01:44:54PM 23 injuries, to the family of Russell Monaco, who died, you know,  
01:45:00PM 24 after receiving care and treatment from Dr. Schneider. I hope  
01:45:05PM 25 that it can be something that is meaningful here.

01:45:08PM 1 So other than that, that's what I -- that's all I  
01:45:13PM 2 really have to say, Your Honor. And I hope you will take that  
01:45:15PM 3 into account in making sentence here.

01:45:18PM 4 THE COURT: Thank you, Mr. Womack.

01:45:24PM 5 MR. RUBICH: Your Honor, I believe next is Mr. Jon  
01:45:28PM 6 Moyers.

01:45:28PM 7 THE COURT: Okay.

01:45:35PM 8 JON MOYERS: Good afternoon, Judge.

01:45:37PM 9 THE COURT: Good afternoon.

01:45:38PM 10 JON MOYERS: Mr. Womack spoke eloquently about the  
01:45:42PM 11 integrity of the legal system, and I will speak to the same.

01:45:45PM 12 Fred Paoli, myself, Paul Warren, and other attorneys  
01:45:50PM 13 have committed a substantial part of our professional career in  
01:45:55PM 14 pursuing medical malpractice and fraudulent conveyance claims  
01:46:00PM 15 against Mr. Schneider in various courts. Behind the  
01:46:04PM 16 bankruptcy, as Mr. Womack spoke, are the sufferings of these  
01:46:09PM 17 individuals whose claims have not been able to receive the full  
01:46:13PM 18 compensation they're entitled to.

01:46:16PM 19 In this bankruptcy, Mr. Schneider has admitted to the  
01:46:20PM 20 fact of his malpractice as well as to the valuation that was  
01:46:25PM 21 set out in the proof of claims that we had filed. But at the  
01:46:29PM 22 end of the day, he did not have insurance that he had committed  
01:46:34PM 23 to have available to the medical facility where he practiced as  
01:46:39PM 24 a neurosurgeon that would be in place to compensate the victims  
01:46:43PM 25 of his malpractice.

01:46:45PM 1 We believe that as a consequence of his purposeful  
01:46:50PM 2 and willful movement of funds that denied these families just  
01:46:57PM 3 compensation that he should suffer the full restitution and  
01:47:01PM 4 maximum fines that are permissible by this court and the  
01:47:05PM 5 harshest punishment possible under the guidelines and the  
01:47:10PM 6 agreement that has been reached with the government.

01:47:12PM 7 As Mr. Womack spoke, this has been a purposeful  
01:47:18PM 8 effort in a complex scheme by Mr. Schneider to hide his assets  
01:47:22PM 9 from those who are most deserving of the money. We represent  
01:47:27PM 10 individuals who have had their lives turned upside-down by his  
01:47:31PM 11 medical errors, who will live in chronic pain, who will not  
01:47:34PM 12 enjoy the benefits of their father or their husband due to  
01:47:40PM 13 malpractice that he's admitted that he has committed. There is  
01:47:45PM 14 no punishment great enough for that, but we believe that this  
01:47:48PM 15 Court has the ability to effect a just remedy for the errors  
01:47:54PM 16 that he has made.

01:47:56PM 17 In the bankruptcy matter, Mr. Womack has spoken to  
01:47:59PM 18 the decision by Dr. Schneider to withhold over \$300,000 from  
01:48:05PM 19 the estate. That revelation was learned by us after we had  
01:48:10PM 20 reached a settlement agreement with Mr. Schneider, an attempt  
01:48:14PM 21 to resolve these bankruptcy issues as expeditiously as possible  
01:48:18PM 22 to preserve what funds would be available in the estate to pay  
01:48:22PM 23 these injured claimants. Our actions would have been entirely  
01:48:27PM 24 different had we known the extent of the fraud that he had  
01:48:28PM 25 committed on the trustee. And we believe as a result of that,

01:48:32PM 1 the compensation that would have been obtained in the  
01:48:35PM 2 bankruptcy, had he been honest, should be paid as part of this  
01:48:39PM 3 Court's sentencing against Mr. Schneider.

01:48:43PM 4 And with that, Your Honor, those conclude my remarks.  
01:48:48PM 5 I appreciate your deliberation in this, and I appreciate you  
01:48:52PM 6 hearing the testimony from Russ Monaco.

01:48:56PM 7 Just by a little way of background, to set the table  
01:48:58PM 8 for the family's testimony, Russ Monaco was a surgical patient  
01:49:01PM 9 of Mr. Schneider when he was practicing in Wyoming. And  
01:49:05PM 10 post-operatively, he prescribed a transdermal fentanyl patch  
01:49:09PM 11 that we hear quite a bit about in the news. And that, in  
01:49:12PM 12 combination with other medications that had been prescribed by  
01:49:16PM 13 Mr. Schneider had caused Mr. Monaco to lose his life shortly  
01:49:21PM 14 after discharge from the hospital.

01:49:23PM 15 The Wyoming Board of Medicine considered that to be a  
01:49:28PM 16 gross violation of the Wyoming Rules of Practice and commenced  
01:49:31PM 17 an action against him that required him to -- to go to trial,  
01:49:38PM 18 and that resulted in a conviction that he had violated the  
01:49:42PM 19 professional standards in Wyoming, and then a revocation of his  
01:49:44PM 20 license, which, for a neurosurgeon in Wyoming, in a poorly  
01:49:49PM 21 served medical state, like ours, was a pretty exceptional  
01:49:53PM 22 result. But there is no doubt about the merits of any of these  
01:49:57PM 23 claims that have been brought against Mr. Schneider. And you  
01:50:01PM 24 will hear now from the Monaco family about how his conduct has  
01:50:06PM 25 affected them forever.

01:50:07PM 1 Thank you.

01:50:08PM 2 THE COURT: Thank you, Mr. Moyers.

01:50:12PM 3 MR. RUBICH: Mallory Monaco, Your Honor.

01:50:31PM 4 MALLORY MONACO: I'm Mallory Monaco, and Russ is my  
01:51:27PM 5 dad. And I want people to understand how this whole ordeal has  
01:51:32PM 6 changed my family's lives forever.

01:51:34PM 7 "My dad passed away when I was in eighth grade and my  
01:51:37PM 8 sister was in fifth; we were just 14 and 10. He left us a few  
01:51:41PM 9 weeks before Christmas on December 2nd, 2011. I remember that  
01:51:46PM 10 day like it just happened yesterday.

01:51:51PM 11 "I still have all these amazing memories we shared as  
01:51:54PM 12 a family, and I wish we could have had the chance to make a lot  
01:51:58PM 13 more. I am scared that since he passed away while my sister  
01:52:02PM 14 and I were so young that I will forget the little memories I  
01:52:07PM 15 cherish the most. That is one of my biggest fears in life.

01:52:11PM 16 "A lot of people have asked how this affects my  
01:52:14PM 17 family. It's been really tough growing up with just one  
01:52:16PM 18 parent, and my sister and I could have had two amazing parents  
01:52:20PM 19 raising us. It's also difficult knowing his death could have  
01:52:24PM 20 been prevented. I feel guilty like I could have done  
01:52:27PM 21 something, and I know my mom feels the same. I know, no matter  
01:52:31PM 22 what we believe, that it's not our fault. It's just really  
01:52:36PM 23 hard accepting that he's gone because of someone's mistake.

01:52:40PM 24 "It's very hard knowing that he won't be able to see  
01:52:43PM 25 all the important milestones coming up in our lives. My mom is

01:52:48PM 1 such an incredible woman for putting herself as a mom and dad  
01:52:52PM 2 role in the family. My dad was a very quiet guy, but he always  
01:52:57PM 3 made everyone he met feel like they've known him for years. He  
01:53:04PM 4 was just a sweet, generous guy who everyone loved.

01:53:06PM 5 "He was my coach in softball ever since I started  
01:53:09PM 6 when I was around eight. Him and his friends started a travel  
01:53:12PM 7 team for my friends and I. He was a great coach and a great  
01:53:16PM 8 cheerleader, except to the umpires. Softball is my dad and I's  
01:53:23PM 9 thing together. Since he passed, it was really hard for me to  
01:53:26PM 10 continue playing softball with the team that he started.

01:53:29PM 11 "I played with them for two years after he passed,  
01:53:33PM 12 but it just got to be too much pain and sadness that went along  
01:53:37PM 13 with the game that I loved so much. I know that if he was  
01:53:40PM 14 still around, I'd still be playing my heart out on the field  
01:53:45PM 15 and he would still be cheering me on. I do miss softball, but  
01:53:50PM 16 I miss my dad so much more.

01:53:55PM 17 "My sister and my dad are so alike. It is difficult  
01:53:58PM 18 knowing my dad didn't get to see her get out of her awkward  
01:54:03PM 19 stages and be a part of the beautiful teenager she's becoming.  
01:54:08PM 20 I know he is watching over us, but that isn't the same as him  
01:54:12PM 21 being here while we grow up. He was a great man and loved by  
01:54:16PM 22 so many. He will never be forgotten as long as we all live.

01:54:21PM 23 "He has already missed so many big milestones in our  
01:54:25PM 24 lives. But no matter what, he will always watch over us and be  
01:54:27PM 25 proud of the accomplishments we have succeeded in.



01:54:30PM 1 "I know for sure he's very proud of my mom for  
01:54:33PM 2 raising my sister and me all by herself, which none of us  
01:54:37PM 3 thought she would ever have to do. I know he would do anything  
01:54:40PM 4 to be here with her and us again, and we would all do anything  
01:54:44PM 5 for him to be here too. And I love him so much and I wish I  
01:54:51PM 6 could still tell him that."

01:55:01PM 7 MR. RUBICH: Judy Monaco, Your Honor.

01:55:13PM 8 JUDY MONACO: Good afternoon, Judge.

01:55:24PM 9 THE COURT: Good afternoon.

01:55:25PM 10 JUDY MONACO: My name is Judy Monaco, and I'm Russell  
01:55:29PM 11 Monaco's mother. I'm going to do this. I'm going to get  
01:55:34PM 12 through this. This is the last thing I can ever do for my son.

01:55:40PM 13 "I would like to take this opportunity to tell you a  
01:55:43PM 14 little bit about Russ. Russ had two brothers, an older  
01:55:48PM 15 brother, Rob, who you just saw, and a younger brother, Reece.  
01:55:52PM 16 His dad and I worked hard to give our boys a good life, and we  
01:55:55PM 17 were a normal, happy family.

01:55:57PM 18 "Russ graduated from West High School here in  
01:55:59PM 19 Billings and went on to get his degree from North Dakota School  
01:56:02PM 20 of Science. Russ was a master machinist and was very good at  
01:56:06PM 21 it. There was nothing Russ couldn't do from his trade,  
01:56:10PM 22 carpentry, or working on cars, and Russ was always there and  
01:56:13PM 23 willing to help anyone that needed help from family to friends  
01:56:18PM 24 or anyone. Russ liked to hunt and fish and coach girls  
01:56:22PM 25 softball.

01:56:23PM 1 "Russ was proud of his brothers. Rob is a news  
01:56:26PM 2 director and photographer for Q2 TV in Billings, and Reece is a  
01:56:29PM 3 sportscaster for the University of Wyoming and the director of  
01:56:32PM 4 the Wyoming's Cowboy News Network that covers 30 stations in  
01:56:37PM 5 the state.

01:56:40PM 6 "Russ absolutely adored his wife, Kathy, and his two  
01:56:43PM 7 daughters, Mallory and Madison. He also loved his dog, a  
01:56:47PM 8 Siberian Husky named Timba. Russ loved to cook for his family  
01:56:52PM 9 and made the greatest spaghetti ever. Russ was proud of his  
01:56:54PM 10 Italian heritage, as are his brothers.

01:56:58PM 11 "In 2008 Russ's dad died suddenly. I would have not  
01:57:03PM 12 made it through this time if it had not been for Russ and his  
01:57:06PM 13 brother, Rob. We were just beginning to get some closure and  
01:57:11PM 14 move on when the tragedy of our lives happened and Russ was  
01:57:14PM 15 taken from us. My beautiful, happy family was now broken and  
01:57:20PM 16 nothing will ever fix it.

01:57:22PM 17 "I would now like to talk a little bit about what has  
01:57:26PM 18 happened since Russ died and how it has affected our lives.

01:57:31PM 19 "First of all, I would like you to know that it was I  
01:57:35PM 20 that instigated the lawsuit against Mr. Schneider. I was so  
01:57:39PM 21 very angry about his incompetence as a doctor that I felt this  
01:57:46PM 22 was our only recourse. We only wanted to provide some kind of  
01:57:51PM 23 financial security for Mallory and Madison so that their  
01:57:54PM 24 education would be provided for. We figured that his  
01:57:57PM 25 malpractice insurance would settle and that it would be the end

01:58:00PM 1 of it, but what a shock when we found out that he had none. It  
01:58:05PM 2 is now obvious to us that Russ's life meant nothing to him. It  
01:58:11PM 3 is all about the money.

01:58:12PM 4 "I would guess that Mr. Schneider started trying to  
01:58:15PM 5 hide his assets days after Russ's death. Because of his  
01:58:18PM 6 actions, we have been put through hell as a family for the last  
01:58:22PM 7 five years. Just when we have had a few good months, and here  
01:58:29PM 8 it is again in the papers for all to see, and how can we ever  
01:58:32PM 9 forget, as if we could. We sat in this courtroom and had to  
01:58:36PM 10 listen to him get on the stand and lie. Now it appears that  
01:58:40PM 11 there will be no consequences for that.

01:58:44PM 12 "Russ's birthday is May 7th. I went to the cemetery  
01:58:49PM 13 and sat on a bench and looked at my son's headstone. I hope to  
01:58:55PM 14 God that Dr. Schneider never has to know what that feels like,  
01:58:59PM 15 but then there is no God for people like him.

01:59:03PM 16 "Please, Your Honor, do not let him walk out of this  
01:59:06PM 17 courtroom without having to suffer some serious consequences  
01:59:11PM 18 for what he has done, not only to my family, but also for his  
01:59:15PM 19 total disregard for the laws of this court."

01:59:18PM 20 And now I'd like to read a statement from my other  
01:59:23PM 21 son.

01:59:23PM 22 "My name is Reece Monaco. And, first, let me  
01:59:27PM 23 apologize to the Court for not being able to be there today.

01:59:31PM 24 "Russ Monaco was one of my older brothers, and  
01:59:34PM 25 unfortunately his life was taken from him way too early. I am

01:59:39PM 1 older now than he was when his life ended while sitting on his  
01:59:44PM 2 couch in his living room for his young daughter to find him  
01:59:48PM 3 while getting ready for school that morning. I don't think  
01:59:51PM 4 there is anything I can say that will be more powerful or  
01:59:55PM 5 heartfelt than the comments from his wife, Kathy, or his  
01:59:59PM 6 daughters, Mallory and Madison, who have had to deal with life  
02:00:02PM 7 without their husband and father, just like my mother has had  
02:00:06PM 8 to deal with the loss of her son, and just like my older  
02:00:10PM 9 brother, Rob, and I have had to deal with life without our  
02:00:14PM 10 brother, Russ.

02:00:14PM 11 "Russ was a big man with a big character, and it's  
02:00:18PM 12 too bad that his daughters have had to sit in this courtroom  
02:00:22PM 13 today and look at the man that is responsible for his death who  
02:00:26PM 14 has such little character. It is also absolute shame that this  
02:00:31PM 15 has come down to a decision about dollars and cents and not the  
02:00:35PM 16 loss of a life that was taken way too early.

02:00:38PM 17 "When I say this man has no character, all the Court  
02:00:42PM 18 has to do is look at his track record. Just ask the doctor in  
02:00:46PM 19 Cody that was run down by this man's lack of character, and  
02:00:50PM 20 look at the extent he went to hide his money because he knew  
02:00:54PM 21 what he did to my brother, Russ, was wrong. This man has shown  
02:00:58PM 22 no remorse or regard -- regret, for his action has always  
02:01:03PM 23 pointed the finger at others for his failures in which another  
02:01:07PM 24 example of his -- which is another example of his lack of  
02:01:11PM 25 character.

02:01:11PM 1 "Doctors are sworn to preserve life and better  
02:01:16PM 2 humanity. This man did not preserve life, and the only human  
02:01:20PM 3 whose life he is concerned about bettering is his own with  
02:01:24PM 4 deception and lies, no matter who he has to hurt along the way.

02:01:28PM 5 "While our family and Russ's daughters are coming to  
02:01:31PM 6 grips with the sudden loss of Russ's life, this man immediately  
02:01:34PM 7 began scheming and lying, blaming others and covering up his  
02:01:39PM 8 assets, because that's what this is all about right now; money,  
02:01:43PM 9 not a man's life. So he hid behind the legal system and  
02:01:49PM 10 enlisted the help of his family to perpetrate his lies. He has  
02:01:52PM 11 proven to be a liar and a cheat. And when asked to tell the  
02:01:56PM 12 whole truth and nothing but the truth, he sat on the stand and  
02:02:00PM 13 lied to the Court, which also shows he has no character to  
02:02:04PM 14 speak of, but which is also against the law; that is why he is  
02:02:08PM 15 here today.

02:02:09PM 16 "Your Honor, please take into consideration this  
02:02:12PM 17 man's past, his actions and lack of guilt or remorse in  
02:02:16PM 18 everything he has done, and at the very least sentence him to  
02:02:21PM 19 some time behind bars. While some jail time would not be the  
02:02:26PM 20 justice we are looking for, it's the least that could be done.  
02:02:29PM 21 While he might think his life would be over if he goes to  
02:02:34PM 22 jail -- has to do jail time, my brother Russ's life is over  
02:02:38PM 23 because of the actions of this selfish, arrogant, lying,  
02:02:42PM 24 unethical, worthless man.

02:02:49PM 25 "Punishment won't hurt his character, because he has

02:02:51PM 1 none. But my brother, who at times was larger than life, had  
02:02:55PM 2 his character and life taken from him by the worthless human  
02:02:58PM 3 being sitting in this courtroom today.

02:03:00PM 4 "Thank you."

02:03:02PM 5 THE COURT: Thank you.

02:03:08PM 6 MR. RUBICH: I think that's everyone, Your Honor.

02:03:10PM 7 THE COURT: Okay.

02:03:13PM 8 And, Mr. Rubich, you may be heard as to sentencing.

02:03:16PM 9 MR. RUBICH: Thank you, Your Honor.

02:03:16PM 10 Obviously, I submitted a sentencing memorandum in  
02:03:20PM 11 this case, and I'm not sure where to begin, because there's so  
02:03:27PM 12 much to say.

02:03:28PM 13 I've been working with this case for quite some time,  
02:03:33PM 14 and I've seen a lot of bankruptcy, fraudulent situations, but  
02:03:37PM 15 this one is, I have to say, unique, and unique in its  
02:03:42PM 16 egregiousness. And when you -- when you look at this -- I  
02:03:47PM 17 tried to lay that out in my sentencing memorandum. You know,  
02:03:49PM 18 you have to take into consideration how he ended up in  
02:03:53PM 19 bankruptcy in the first place.

02:03:55PM 20 There is the bizarre litigation involving Dr. Biles  
02:03:59PM 21 down in Wyoming. I don't know what led to do that, but, you  
02:04:04PM 22 know, this is a man who engaged systematically in coercing  
02:04:09PM 23 another person to make fraudulent allegations against another  
02:04:13PM 24 person, and then actively trying to subvert a federal court  
02:04:16PM 25 proceeding that was dealing with that.

02:04:19PM 1           So to begin from that -- and that, in and of itself,  
02:04:22PM 2 is concerning. But once all of that wrapped up, Dr. Biles, who  
02:04:26PM 3 is a surgeon, who ought to know that what -- the business that  
02:04:30PM 4 he is engaged in by its very nature is high risk. Anytime you  
02:04:34PM 5 put someone underneath a knife, it's going to be dangerous.  
02:04:38PM 6 And to do so without the benefit of insurance, which he knew he  
02:04:42PM 7 did not have as a result of funneling all the money that he had  
02:04:45PM 8 in his captive insurance company to pay for this defamation  
02:04:50PM 9 claim, it's utterly reckless.

02:04:52PM 10           I mean, I don't understand how someone could be so --  
02:04:56PM 11 and, again, I'm not getting into -- I'm not going to get in --  
02:04:58PM 12 because I wasn't involved in the merits of the malpractice  
02:05:02PM 13 claims. But what I do know is the act of performing surgery on  
02:05:12PM 14 someone without having a safety net in place should something  
02:05:16PM 15 go wrong suggests that you have an inability to understand how  
02:05:19PM 16 your actions affect other people. It's scary, it's terrifying.  
02:05:23PM 17 You know, lawyers do the same thing, we are expected to keep  
02:05:30PM 18 insurance for a reason, because if we make a mistake, the  
02:05:30PM 19 consequences are devastating.

02:05:33PM 20           So the fact that he did that, and the fact that he  
02:05:35PM 21 did that in a way to -- and that's what should be said, is that  
02:05:40PM 22 this is a guy, before bankruptcy, he has vast assets; he had  
02:05:45PM 23 several luxury properties in Wyoming and here, he owned a large  
02:05:49PM 24 house -- still does own a large house down in Wyoming -- or  
02:05:52PM 25 sorry, in California.

02:05:53PM 1 And I don't say that to begrudge the man anything.  
02:05:57PM 2 You know, if you're successful in life, that's great. But what  
02:05:59PM 3 will you do to preserve what is essentially money and things?  
02:06:07PM 4 And it seems to me that Dr. Schneider was willing to do just  
02:06:11PM 5 about anything, including take my insurance, I'm going to pay  
02:06:15PM 6 off this settlement, despite the fact that, I assume, he must  
02:06:18PM 7 have had, based on the assets that I've seen as a result of  
02:06:21PM 8 this bankruptcy proceeding, more than enough assets in his  
02:06:23PM 9 personal holdings to pay this thing. But he made that  
02:06:27PM 10 decision.

02:06:27PM 11 And with that background, and after he's released  
02:06:31PM 12 from the Montana Insurance Commission, after he says, "I'm  
02:06:34PM 13 going to pay this off. I'm going to make this right," he  
02:06:37PM 14 enters into bankruptcy. And after all those facts are set  
02:06:40PM 15 down, he has the audacity, the greed, the recklessness to  
02:06:45PM 16 continue to put his own personal well-being, his own finances  
02:06:50PM 17 above what -- about doing the right thing, about -- at least at  
02:06:56PM 18 that point making -- doing what he could to make these people  
02:07:01PM 19 whole. It's shocking.

02:07:05PM 20 And someone who has dedicated his life to the idea  
02:07:08PM 21 that this justice system, this court system means something,  
02:07:12PM 22 that what we do here is important, that the rules that we have  
02:07:15PM 23 set down as a society are important and that they're there for  
02:07:20PM 24 a reason, it baffles me to see someone like Dr. Schneider  
02:07:27PM 25 who -- he's given so many opportunities to do the right thing,



02:07:31PM 1 and just time after time after time he says, no, I'm not going  
02:07:35PM 2 to do the right thing. I'm going to do the right thing that's  
02:07:38PM 3 best for me. Because that's what matters at the end of this  
02:07:40PM 4 thing. It doesn't matter how many people I've hurt, it doesn't  
02:07:43PM 5 matter what I do.

02:07:44PM 6 So from my perspective, I look at the 3553(a)  
02:07:48PM 7 factors, Your Honor, and I see someone who has no respect for  
02:07:50PM 8 the law. And, in fact, we talk about lack of respect for the  
02:07:53PM 9 law all the time, but I've never seen someone who gave us such  
02:07:57PM 10 concrete examples of his inability to respect the law. He  
02:08:01PM 11 disrespected the federal court system down in Wyoming, he  
02:08:04PM 12 disrespected the Montana Insurance Commission, then he  
02:08:06PM 13 disrespects the bankruptcy proceeding. So at multiple levels,  
02:08:11PM 14 he has no regard for the administration of legal proceedings.  
02:08:18PM 15 And, again, it goes back to, as far as I can tell, greed and  
02:08:21PM 16 the idea that he might not get to have everything that he has.

02:08:25PM 17 And at the same time, I see someone who is unable to  
02:08:31PM 18 appreciate the gravity of his actions. How else do we get here  
02:08:37PM 19 today? So under these circumstances, Your Honor, I look at the  
02:08:39PM 20 guidelines, the guidelines for me are the heartlands of where  
02:08:43PM 21 we belong, and 24 months is what I'm asking for.

02:08:45PM 22 I would like to note, Your Honor -- I know there's  
02:08:47PM 23 been some statements from the victims -- they would like more.  
02:08:52PM 24 It would be nice if they were able to get more in restitution.  
02:08:57PM 25 I can assure Your Honor that, unfortunately, after researching

1 the case law and every other thing, that 308,000 that was  
2 arrived at was the maximum that the Supreme Court will allow.

3 The attorneys' fees. There was literally just a case  
4 that came down from the Supreme Court that says that because  
5 the way the statute is written you cannot assign restitution  
6 amounts for attorneys' fees that are not directly connected  
7 with the criminal investigation. The criminal investigation  
8 was done by John Teeling and myself largely, so none of the  
9 attorneys' fees can really be applied to restitution.

10 And that's the last thing that I'll say, is that the  
11 amount that was used to calculate the guidelines in this case,  
12 the amount of restitution, is the number. But if you look at  
13 the harm that was caused, I do think, and I do want you to  
14 consider, Your Honor, that this bankruptcy proceeding was much  
15 more expensive, was much more lengthy, and much more  
16 complicated than it would have been absent his fraud, and that  
17 had costs associated with it. It's not restitution that we can  
18 give, but it is something that I would like you to consider as  
19 you contemplate a sentence.

20 So I would ask for 24 months, Your Honor, followed by  
21 three years of supervised release.

22 Thank you.

23 THE COURT: So, Mr. Rubich, what consequence was  
24 there, if any, to Dr. Schneider for raiding his self-funded  
25 malpractice insurance account?

02:10:24PM 1 MR. RUBICH: Your Honor, it's my understanding -- I  
02:10:26PM 2 wasn't involved in those proceedings, but I submitted that  
02:10:28PM 3 letter. It was my understanding that --

02:10:30PM 4 THE COURT: Well, wasn't that from the Montana  
02:10:33PM 5 Insurance Commission?

02:10:33PM 6 MR. RUBICH: It was, Your Honor.

02:10:34PM 7 THE COURT: But was that -- maybe I'm  
02:10:37PM 8 misunderstanding. I was thinking that it was in Wyoming that  
02:10:41PM 9 he had that malpractice fund, but maybe it was in Montana. I  
02:10:47PM 10 know he used the funds to pay off Dr. Biles.

02:10:50PM 11 MR. RUBICH: It's my understanding that that was  
02:10:51PM 12 his -- wherever he practiced, that was how he had insurance,  
02:10:55PM 13 was this Montana corporation that was regulated by the Montana  
02:11:00PM 14 Insurance Commission. If I'm incorrect, the defense can  
02:11:03PM 15 correct me, but that's my understanding of how it worked.

02:11:06PM 16 THE COURT: Well, I think Mr. Moyers knows. Maybe  
02:11:08PM 17 Mr. Moyers or Mr. Womack will help me.

02:11:12PM 18 I'm not sure that it has a whole lot of bearing, but  
02:11:16PM 19 it seems to me that, you know, lawyers are required to have  
02:11:19PM 20 malpractice insurance, doctors are required to have malpractice  
02:11:22PM 21 insurance, all kinds of professions are required to have errors  
02:11:27PM 22 and omissions insurance. But is there a penalty for not having  
02:11:31PM 23 it? That, I don't know the answer to.

02:11:34PM 24 JON MOYERS: There was not. So Mr. Schneider  
02:11:38PM 25 practiced in four surgical areas in Wyoming. He was insured by

02:11:41PM 1 a captive insurance company that he had created that was under  
02:11:44PM 2 his control here in Montana that was called Northern Rockies  
02:11:47PM 3 Insurance Company. He had maintained in excess of \$3 million  
02:11:50PM 4 in cash in that; that was for the express purpose of covering  
02:11:54PM 5 victims of malpractice. That was a part of the credentialing  
02:12:00PM 6 privilege requirements of the surgical facilities that he'd  
02:12:04PM 7 operated. Wyoming, like Montana, doesn't have a state statute  
02:12:07PM 8 that mandates surgeons to carry professional liability  
02:12:11PM 9 insurance, but that was what he had committed every year, is  
02:12:13PM 10 that he carry that insurance. And then as the Court knows,  
02:12:15PM 11 then he raided that to pay Dr. Biles.

02:12:18PM 12 When the Montana commission became aware of that  
02:12:22PM 13 fraud, then they shut down -- or they suspended Northern  
02:12:27PM 14 Rockies Insurance Company and entered an order requiring  
02:12:29PM 15 Mr. Schneider then to repay those funds, which he never did,  
02:12:32PM 16 and that matter has remained open and is unresolved. But there  
02:12:38PM 17 has been no other penalties assessed to him because of that.

02:12:42PM 18 THE COURT: Well, what teeth does that have? What  
02:12:45PM 19 can the insurance commission do if he doesn't repay the money  
02:12:49PM 20 that he promised to repay?

02:12:51PM 21 JON MOYERS: I've asked for them to pursue that or  
02:12:53PM 22 I've asked them to deputize us to pursue that.

02:12:56PM 23 THE COURT: But I mean what can you do? Get a  
02:12:59PM 24 judgment against him and that's about it?

02:13:01PM 25 JON MOYERS: Correct.

02:13:01PM 1 THE COURT: Yeah.

02:13:02PM 2 JON MOYERS: That's why we've asked -- so that's what  
02:13:06PM 3 prompted the -- you know, he claimed he didn't have any other  
02:13:08PM 4 assets, Mr. Womack spent a lot of time trying to figure out  
02:13:12PM 5 where they were, but then that provided the basis for him to  
02:13:15PM 6 claim bankruptcy.

02:13:16PM 7 THE COURT: How much was in the fund?

02:13:18PM 8 JON MOYERS: The fund itself had to have in excess of  
02:13:21PM 9 \$3 million, because the hospitals and the surgery centers  
02:13:25PM 10 required him to have a 1 million/\$3 million coverage, the  
02:13:29PM 11 \$3 million to be aggregated claims. And so they maintained  
02:13:33PM 12 a -- so he maintained an account that held \$3 million, which  
02:13:37PM 13 were then depleted to either pay his attorneys or to pay  
02:13:44PM 14 Dr. Biles. And that claim, under the policy that existed at  
02:13:49PM 15 the time, for what it's worth, was an improper claim, so the --

02:13:52PM 16 THE COURT: Right. It wasn't any malpractice or  
02:13:57PM 17 anything related to his medical practice.

02:13:58PM 18 JON MOYERS: Right.

02:13:59PM 19 And then after the horse was out of the barn, then he  
02:14:02PM 20 made a resolution to have that policy changed to permit payment  
02:14:06PM 21 for libel claims, but it had already been paid contrary to what  
02:14:11PM 22 had been the policy. So that's why we've asked for the full  
02:14:13PM 23 restitution here, because there's nowhere else to get it.

02:14:18PM 24 THE COURT: Right. And you can't get it here --

02:14:18PM 25 JOE WOMACK: I agree with what Mr. Moyers said; that

02:14:23PM 1 is accurate. We've spent a lot of time investigating this.

02:14:26PM 2 Everything is correct.

02:14:27PM 3 THE COURT: So, Mr. Womack, as far as the \$600,000  
02:14:31PM 4 plus in attorney fees that the bankruptcy -- that you, as  
02:14:35PM 5 bankruptcy trustee, had to -- and then the estate had to incur,  
02:14:40PM 6 what is your recourse to collect that?

02:14:43PM 7 JOE WOMACK: We have no further recourse. We brought  
02:14:47PM 8 fraudulent conveyance claims seeking to set aside, to transfer  
02:14:53PM 9 of many, several -- you know, quite a few million dollars in  
02:14:57PM 10 assets from Dr. Schneider into various shell entities and other  
02:15:04PM 11 entities that he had set up with his wife and children as --  
02:15:08PM 12 and sister originally as controlling directors or officers.  
02:15:17PM 13 And our investigation showed that he had retained actual  
02:15:21PM 14 control of those entities through his wife, his children.

02:15:28PM 15 We ended up compromising and settling the claim for  
02:15:31PM 16 less than what -- half of what we believe we could get because  
02:15:36PM 17 of the -- so many problems in pursuing it and the time. We did  
02:15:40PM 18 recover probably about, roughly \$1.8 million in assets. But --  
02:15:48PM 19 and that's the basis for the attorneys' fees. We had to hire  
02:15:52PM 20 attorneys on a contingency fee to pursue those. The attorneys  
02:15:57PM 21 will be paid, but that has depleted the amount that's available  
02:16:01PM 22 to pay the actual claimants in the case itself. Had there been  
02:16:06PM 23 full disclosure by Dr. Schneider and he had not entered into  
02:16:09PM 24 this fraud and these schemes to conceal and transfer assets, we  
02:16:14PM 25 wouldn't have had to employ attorneys, or the amount that we

02:16:18PM 1 would have had to pay would have been far less.

02:16:23PM 2 THE COURT: Well, you'd have at least 1.8 million,  
02:16:28PM 3 right --

02:16:29PM 4 JOE WOMACK: We do have --

02:16:31PM 5 THE COURT: -- in assets?

02:16:31PM 6 You have that, but you have to subtract the 600,000  
02:16:35PM 7 in attorneys' fees.

02:16:36PM 8 JOE WOMACK: And we have to pay the attorneys' fees  
02:16:36PM 9 out of that.

02:16:37PM 10 THE COURT: Right.

02:16:37PM 11 JOE WOMACK: And then there's also been other costs  
02:16:39PM 12 of administration of the estate.

02:16:40PM 13 THE COURT: Sure.

02:16:41PM 14 JOE WOMACK: So in the end, we've paid tax claims out  
02:16:44PM 15 of that. He had 150,000 in tax claims owed to the Montana  
02:16:49PM 16 Department of Revenue that we've paid.

02:16:49PM 17 (Off-the-record discussion between Jon Moyers and Joe  
02:16:49PM 18 Womack.)

02:16:57PM 19 JOE WOMACK: He also incurred a fine to the Wyoming  
02:17:02PM 20 Board of Medicine for revocation of his license and the  
02:17:04PM 21 attorneys' fees incurred in that process. So we are paying  
02:17:09PM 22 that claim as well, and then the claims to the families.

02:17:15PM 23 And, you know, Mr. Moyers said he didn't -- I think  
02:17:19PM 24 there was some talk about whether or not he actually committed  
02:17:23PM 25 malpractice. But in the bankruptcy, he admitted, or agreed to

02:17:27PM 1 the allowance of the \$3 million claim by the Monaco family, a  
02:17:33PM 2 million dollars by Sherry Lee and other people based on the  
02:17:37PM 3 malpractice that was alleged. So in my mind, those -- that is  
02:17:43PM 4 an admission that he actually committed malpractice and that  
02:17:47PM 5 those people suffered that damage.

02:17:49PM 6 Now, I suppose you can argue that that was a  
02:17:53PM 7 compromise, and I'm sure it was, but at the same time it is an  
02:17:56PM 8 admission of guilt, I think, of medical malpractice that he  
02:18:01PM 9 committed against those people.

02:18:03PM 10 THE COURT: Okay. Thank you both.

02:18:07PM 11 Mr. Smith, you may be heard.

02:18:14PM 12 MR. SMITH: Thank you, Judge.

02:18:15PM 13 Judge, a lot's been said. I'd like to clarify a few  
02:18:20PM 14 things, if I may, about the bankruptcy proceeding. And I  
02:18:26PM 15 will -- Dr. Schneider is going to allocute on his own behalf,  
02:18:29PM 16 and I'll let him address some of the wrongs, some of the things  
02:18:32PM 17 that he did that he's not proud of back then, but there are a  
02:18:36PM 18 few things that I think need to be straightened out.

02:18:39PM 19 The bankruptcy was filed on December 4, 2014. The  
02:18:43PM 20 trustee hired Trent Gardner, a lawyer out of Bozeman, to help  
02:18:48PM 21 him when he realized this was likely a sizeable bankruptcy  
02:18:52PM 22 estate. He hired Trent Gardner as early as February 20, 2015.  
02:18:57PM 23 From the records that I've reviewed, it looks like, yeah,  
02:19:01PM 24 sometime in February Mr. Gardner was brought on board.

02:19:03PM 25 About a month later, Mr. Gardner and the trustee on



02:19:08PM 1 March 24, 2015, filed an adversary proceedings against Kathleen  
02:19:14PM 2 Burrows. Kathleen Burrows is Dr. Schneider's sister. Because  
02:19:18PM 3 the trustee and Mr. Gardner had, in the normal course of their  
02:19:22PM 4 investigation, rather easily, because you can do title  
02:19:26PM 5 searches, figured out that some property in Molt, Montana, had  
02:19:29PM 6 transferred from Mr. Schneider -- Dr. Schneider to Kathleen  
02:19:35PM 7 Burrows. So once they figured that out, they wanted to undo,  
02:19:38PM 8 as the trustee has the power to do, undo that transfer as a --  
02:19:42PM 9 when it's a called a fraudulent conveyance, I'm sure the Court  
02:19:46PM 10 knows, that's a civil term for a conveyance that occurred prior  
02:19:50PM 11 to the bankruptcy that the trustee can reach back and undo. So  
02:19:54PM 12 that's what the trustee sought to do.

02:19:56PM 13           Soon thereafter, probably in April, maybe as late as  
02:19:58PM 14 May, but not much later, they deposed Kathleen Burrows. At the  
02:20:03PM 15 time they deposed Kathleen Burrows, she told them about this  
02:20:06PM 16 Molt property, about the sale, about the money that  
02:20:10PM 17 Dr. Schneider took from that sale and used it as the initial  
02:20:13PM 18 seed money for account 2881 in the U.S. Bank, the account for  
02:20:18PM 19 which he sits here today, the account that was not disclosed in  
02:20:22PM 20 his bankruptcy. So as early as May, they knew about the  
02:20:27PM 21 account -- all about the account.

02:20:32PM 22           THE COURT: But the funds were gone.

02:20:34PM 23           MR. SMITH: The funds had been transferred around,  
02:20:36PM 24 and they --

02:20:37PM 25           THE COURT: They'd been transferred to his wife and

02:20:40PM 1 children's trusts.

02:20:41PM 2 MR. SMITH: Correct. That's right. 305,000 of it;  
02:20:45PM 3 that's correct. And so that's the money now that we've settled  
02:20:49PM 4 on as -- that needs to be returned to the estate by  
02:20:52PM 5 Dr. Schneider in restitution.

02:20:53PM 6 When the bankruptcy was filed in December 2014, the  
02:21:00PM 7 home here in Billings was listed. And not long after that,  
02:21:04PM 8 through this process with Kathleen Burrows, and then into the  
02:21:09PM 9 summer of 2015 when they finally filed the AP 1515, which was  
02:21:13PM 10 the big adversary proceeding in which the trustee and his  
02:21:19PM 11 lawyer, John and his lawyer basically fought over what was  
02:21:23PM 12 going to be -- what were going to be the parameters of the  
02:21:27PM 13 bankruptcy estate.

02:21:27PM 14 The house here in Billings and the Whispering Pines  
02:21:31PM 15 Ranch -- or Whispering Winds Ranch -- I always call it pines --  
02:21:35PM 16 Whispering Winds Ranch in Wyoming turned out to be 80  
02:21:38PM 17 percent -- approximately 80 percent of the value -- recovered  
02:21:42PM 18 value in the bankruptcy estate. So I guess I take a little bit  
02:21:45PM 19 of issue that all of these attorneys' fees and all of the  
02:21:49PM 20 contingency and the expense was as a result of John Schneider's  
02:21:54PM 21 fraud, because I just simply think it wasn't.

02:21:56PM 22 He had definitely set in place, years before he filed  
02:22:01PM 23 bankruptcy, with lawyers advice, some estate planning, some  
02:22:06PM 24 asset protection, as it were. All right. But all of that was  
02:22:11PM 25 discovered through the process of AP 1515, which, in May of

02:22:17PM 1 2016, so fast forward a year, the parties entered into a  
02:22:22PM 2 settlement agreement in order to finish the AP 1515. In  
02:22:32PM 3 addition to other assets, the settlement allowed that the  
02:22:35PM 4 bankruptcy estate would have the Schneider home and would have  
02:22:39PM 5 the Whispering Winds Ranch.

02:22:42PM 6 I wanted to read to the Court what the trustee wrote  
02:22:47PM 7 in his motion to the Court -- to the bankruptcy court asking  
02:22:50PM 8 the court to approve the settlement.

02:22:51PM 9 In that motion it was filed 5/19 of 2016, quote:  
02:22:57PM 10 While the trustee is confident in his claims, the defendants  
02:23:00PM 11 are equally confident that they have done nothing wrong and  
02:23:03PM 12 insist that any transfers were legitimate estate planning and  
02:23:07PM 13 asset protection.

02:23:08PM 14 The defendants are represented by able and  
02:23:10PM 15 experienced counsel, and the trustee has no doubt that  
02:23:13PM 16 defendants will fight tooth and nail on every legal and factual  
02:23:16PM 17 issue. Further, the bulk of the available assets flow from  
02:23:19PM 18 Schneider LP, an entity formed in 2007 with debtor and Michelle  
02:23:25PM 19 Schneider as equal owners.

02:23:26PM 20 The defendants are adamant that, therefore, even if  
02:23:29PM 21 the trustee is fully successful in bringing the assets back to  
02:23:33PM 22 Schneider LP, the estate is only entitled to half of the value  
02:23:37PM 23 of such assets, because Michelle Schneider has a claim of  
02:23:40PM 24 ownership of half of all such assets.

02:23:42PM 25 By the way, Judge, Michelle Schneider was

02:23:44PM 1 independently represented by Mark Parker here -- from Billings  
02:23:47PM 2 here, and I believe that was the assertion. I wasn't a part of  
02:23:52PM 3 all of this, of course. I'm re-creating the past through some  
02:23:55PM 4 of these documents.

02:23:56PM 5 But the trustee went on to say: The bottom line is  
02:23:59PM 6 that the trustee believes strongly that he will be successful  
02:24:02PM 7 on many of his claims. However, there are varying levels of  
02:24:05PM 8 potential success, many of which do not result in a better  
02:24:09PM 9 outcome than what is achieved in this settlement. Further,  
02:24:12PM 10 there is an enormous amount of uncertainty. The probability of  
02:24:17PM 11 success on the merits favor settlement, unquote.

02:24:21PM 12 Last week, the trustee filed a final application for  
02:24:25PM 13 fees and costs with the bankruptcy court in that case. And the  
02:24:29PM 14 report -- he reports collecting 1.888, so round numbers,  
02:24:38PM 15 \$1.9 million in assets to the bankruptcy estate. Judge, when  
02:24:41PM 16 you add the \$308,925 that Dr. Schneider is going to owe in  
02:24:48PM 17 restitution, that puts the bankruptcy estate at \$2.2 million.

02:25:06PM 18 Judge --

02:25:06PM 19 THE COURT: Well, can I ask you about that  
02:25:08PM 20 restitution figure --

02:25:11PM 21 MR. SMITH: Sure.

02:25:10PM 22 THE COURT: -- Mr. Smith?

02:25:11PM 23 MR. SMITH: Yes.

02:25:12PM 24 THE COURT: What is your client's plan to pay it?

02:25:14PM 25 MR. SMITH: Well, Judge, as we promised in the

02:25:17PM 1 settlement -- I'm sorry, in our sentencing memorandum,  
02:25:22PM 2 Dr. Schneider has taken \$35,000 out of a retirement account  
02:25:27PM 3 that he has, and he has a check today to give to the Clerk of  
02:25:32PM 4 Court, once restitution is ordered, as a way of getting  
02:25:37PM 5 started.

02:25:38PM 6 He -- as I have stated in our memorandum, he has  
02:25:43PM 7 begun work using his master's degree in negotiation and dispute  
02:25:48PM 8 resolution to start a business doing alternative dispute  
02:25:53PM 9 resolution with healthcare providers. I've explained to you in  
02:25:57PM 10 our memorandum about the book that he wrote.

02:25:59PM 11 And so that is what -- he plans to go around the  
02:26:02PM 12 country to, if he's free, of course, to, like, American Medical  
02:26:09PM 13 Association meetings and meetings involving neurological  
02:26:12PM 14 association, other medical provider meetings, and sell, not  
02:26:18PM 15 just his book, buy, really, sell his services to major  
02:26:23PM 16 hospitals, if possible, to help them integrate a program with  
02:26:27PM 17 their personnel that will, well, smooth out the wrinkles that  
02:26:33PM 18 happen when, in large hospitals, among staff, intra-hospital  
02:26:39PM 19 and between hospitals and between medical providers and  
02:26:44PM 20 patients, administrators and vendors, you know, there's a whole  
02:26:49PM 21 slough of interrelated things that happen in a hospital  
02:26:53PM 22 setting, as you might guess. And so he -- his book -- and I  
02:26:57PM 23 wanted to read a section of it -- from it to you -- is his  
02:27:03PM 24 whole course of study -- here it is -- is aimed at that.

02:27:08PM 25 And, Judge, I guess the bottom line, Judge, is all of

02:27:11PM 1 the things we're talking about Dr. Schneider happened in 2011,  
02:27:15PM 2 '12, '13, '14, and maybe into '15. But since then, he has  
02:27:21PM 3 tried very hard to change his life and to have a new path.  
02:27:25PM 4 He's not happy -- you're going to hear from him, but he's not  
02:27:28PM 5 happy with what happened during those years. That was -- that  
02:27:33PM 6 was not -- obviously, that was very bad behavior on his part,  
02:27:37PM 7 but also just a bad way for him to be living his life, and it  
02:27:41PM 8 got seriously out of control.

02:27:44PM 9 But in 2015 and into 2016, while this bankruptcy is  
02:27:49PM 10 boiling around, and he takes the time to go to Creighton law  
02:27:53PM 11 school and get a master's degree in negotiation and alternative  
02:27:57PM 12 dispute resolution as a means of maybe -- well, first and  
02:28:02PM 13 foremost, of learning something. He has spent a lot of time  
02:28:05PM 14 reflecting, and with introspection, and this course of study  
02:28:11PM 15 really helped him with that, to understand how it was he got to  
02:28:15PM 16 where he was and is now, which I think is -- that's commendable  
02:28:21PM 17 that he would take that time. I mean, everybody says he  
02:28:25PM 18 doesn't care and he isn't sorry. That isn't true. That just  
02:28:29PM 19 simply isn't true, Judge. Yes, he's had transgressions, but he  
02:28:34PM 20 wants to make good on them.

02:28:35PM 21 If I could, Judge, I just have a paragraph to read.  
02:28:39PM 22 And he wrote at page 19, it's in the first chapter.

02:28:42PM 23 He says, "The underlying theme in this textbook are  
02:28:46PM 24 founded in generativity theory, to create a legacy enabling  
02:28:49PM 25 providers to avoid the mistakes the author witnessed or made

02:28:53PM 1 over a thirty-year neurosurgery career. Please begin by  
02:28:56PM 2 learning the art of active listening. Empathetic attention  
02:29:00PM 3 during conversation reveals your opponent's perspective and  
02:29:03PM 4 dismisses your urge to interrupt, qualify, and correct their  
02:29:07PM 5 understanding of events and issues. In time you will develop a  
02:29:10PM 6 deeper appreciation of inclusion, diversity of views,  
02:29:14PM 7 perspective and become tolerant of opinions that may differ,  
02:29:17PM 8 recognizing that in the end, we all have common needs,  
02:29:21PM 9 interests and goals. Combining the tools of leadership,  
02:29:25PM 10 adherence to policy, and working from an interest-based  
02:29:27PM 11 perspective, healthcare providers learn how to work through the  
02:29:32PM 12 inevitable issues that occur while caring for patients. By  
02:29:34PM 13 proactively addressing problematic situations you will receive  
02:29:37PM 14 a profoundly valuable personal payoff - reduced stress and  
02:29:41PM 15 wasted time, efficient accurate patient care, and comfortable  
02:29:45PM 16 rewarding professional satisfaction."

02:29:47PM 17 And that's just a piece of this, Judge. But I think  
02:29:50PM 18 it shows what -- you know what, I don't think -- I know  
02:29:55PM 19 Dr. Schneider could not have written that paragraph in 2014.  
02:30:00PM 20 His life was not -- he wasn't in a place where he could  
02:30:02PM 21 recognize the things that he's come to recognize over the last  
02:30:05PM 22 several years. You know, I guess the statement comes to mind,  
02:30:11PM 23 if he knew then what he knows now, we wouldn't be here, Judge;  
02:30:15PM 24 but he didn't. But, yet, he's taken the time to rehabilitate  
02:30:20PM 25 himself in that way.

02:30:23PM 1 Before I go on about that, I would like to address  
02:30:26PM 2 something about the personal injury claimants, or the claims  
02:30:31PM 3 that were made by the personal injury -- by Jon Moyers  
02:30:35PM 4 discussed and Joe Womack discussed too.

02:30:39PM 5 When those claims came into bankruptcy, Judge, as you  
02:30:43PM 6 know, they were contingent, unliquidated claims for money. And  
02:30:49PM 7 during the -- they were very involved during the process that  
02:30:53PM 8 AP 1515 took between the trustee and Mr. Schneider and his  
02:30:59PM 9 lawyers and the trustee's lawyer.

02:31:04PM 10 The trustee, in his final application for fees, just  
02:31:08PM 11 last week -- I'm sorry, I lost my place, but I will find it --  
02:31:25PM 12 said it better than I said it in our -- more concisely than I  
02:31:30PM 13 said it in our sentencing memorandum, Judge. He said to the  
02:31:47PM 14 Court last week, in explaining to the Court how he had come to  
02:31:54PM 15 have the trustee fees that he did and the attorneys' fees that  
02:31:56PM 16 he did, and he explained about the personal injury claimants.  
02:32:01PM 17 And I'm sorry, it took me a second there. He stated to the  
02:32:05PM 18 Court, on August 9th of 2018, "The trustee was also successful  
02:32:10PM 19 in getting the debtors' discharge denied, with no attorneys'  
02:32:13PM 20 fees being charged by the trustee for this legal work."

02:32:17PM 21 It is true that John Schneider, he voluntarily, as  
02:32:24PM 22 part of the discussions and settlement of AP 1515, he  
02:32:29PM 23 voluntarily agreed to waive his discharge in the bankruptcy  
02:32:32PM 24 proceeding. There was some pressure from the court to do that,  
02:32:35PM 25 but John did that. And in so doing, he put the plaintiffs --



02:32:43PM 1 the personal injury claimants in a position to seek, to pursue  
02:32:48PM 2 their claims in a court of law, and the trustee acknowledges  
02:32:51PM 3 that.

02:32:52PM 4 This allowed creditors the opportunity to pursue the  
02:32:55PM 5 debtor for any unpaid portion of their claim should they wish  
02:32:59PM 6 to do so. Originally, the PI claimants were very concerned  
02:33:02PM 7 that the debtor did not receive his discharge so that they  
02:33:04PM 8 could pursue him later outside of the bankruptcy. In the end,  
02:33:08PM 9 they waived their right to pursue Schneider outside the  
02:33:11PM 10 bankruptcy in return for not having to prove up their claims.

02:33:15PM 11 And that's exactly what happened, Judge. They --  
02:33:18PM 12 their claims were never proven. And I have to disagree -- I  
02:33:23PM 13 mean, John Schneider was a surgeon and performed high risk type  
02:33:28PM 14 surgeries. He has never acknowledged -- he has never admitted,  
02:33:33PM 15 as they say, that he committed malpractice. I mean, that  
02:33:39PM 16 whole -- that whole factual issue is way outside of a  
02:33:42PM 17 bankruptcy proceeding.

02:33:44PM 18 The trustee mentioned that he allowed the PI  
02:33:47PM 19 claimants' claims. Well, okay, in a bankruptcy proceeding,  
02:33:51PM 20 both the trustee in this case and John's attorney, Jim Cossitt,  
02:33:57PM 21 objected to the PI claims when they were -- came in to the  
02:34:01PM 22 bankruptcy estate. And then when the settlement happened and  
02:34:06PM 23 John agreed to -- that he'd waive his discharge in bankruptcy,  
02:34:10PM 24 part of the deal was that both the trustee and John, through  
02:34:15PM 25 his lawyer, would then take away their objections to those

02:34:21PM 1 claims and, quote, unquote, allow them. That's a process that  
02:34:25PM 2 happens in bankruptcy. But it certainly is no admission that  
02:34:28PM 3 he committed malpractice over the course of five or six, or  
02:34:33PM 4 whatever -- how many claimants there are, Judge. That's just  
02:34:35PM 5 not a fair statement, I don't think.

02:34:37PM 6 The trustee also acknowledged the unsecured  
02:34:44PM 7 creditors, the group that is represented by Mr. Moyers in his  
02:34:48PM 8 filing last week, when he said to the judge, quote: The group  
02:34:51PM 9 of unsecured creditors that express concerns are generally  
02:34:55PM 10 described as the personal injury plaintiffs, PI claimants. The  
02:34:59PM 11 PI claimants are represented by attorneys on a contingency  
02:35:03PM 12 basis. The amount recovered for the PI claimants will impact  
02:35:05PM 13 the amount the PI claimant attorneys and their clients will  
02:35:09PM 14 receive. So they're motivated to cause the attorney fees and  
02:35:12PM 15 trustee fees to be reduced as much as possible in order to  
02:35:16PM 16 increase their respective recoveries. Applicant is not aware  
02:35:19PM 17 of the legal or factual basis of their objections.

02:35:22PM 18 So he addressed that. And with this filing last  
02:35:28PM 19 week, he gave the judge a -- basically an accounting of the  
02:35:34PM 20 bankruptcy estate. And it's true, the final report shows the  
02:35:38PM 21 total recovery into the estate was one point eight eight eight  
02:35:43PM 22 seven twenty-three, so approximately \$1.9 million. Of that,  
02:35:48PM 23 there were administrative fees, attorneys' fees, both for the  
02:35:52PM 24 trustee and for the trustee's attorney, and then trustee fees,  
02:35:56PM 25 leaving, Judge, a total of \$568,928, so \$569,000, to be

02:36:05PM 1 distributed among the unsecured creditors, which includes all  
02:36:09PM 2 of the PI claimants, as they are called.

02:36:15PM 3 The report -- I'll add one last thing, Judge. The  
02:36:26PM 4 report reflects that of the -- and maybe I should take a step  
02:36:32PM 5 back -- of the claims -- the unsecured claims, what each  
02:36:37PM 6 claimant will receive is approximately 7.9 percent of their  
02:36:42PM 7 overall claim. Okay. That sounds like peanuts, 7.9 cents on  
02:36:48PM 8 the dollar, right? But that's really not atypical in a  
02:36:53PM 9 bankruptcy proceeding, I don't believe.

02:36:55PM 10 And what I came to learn in preparing this case for  
02:36:59PM 11 Dr. Schneider was, when, for instance -- well, I can just look  
02:37:04PM 12 at them, but when the PI claimants came in to the bankruptcy,  
02:37:10PM 13 they came in suggesting that their claims were worth  
02:37:15PM 14 \$1 million. Harley Morrell, the PA that is claiming some kind  
02:37:19PM 15 of contract dispute, \$300,000. I don't want to name names, but  
02:37:25PM 16 you know, a million dollars, \$1.5 million, a million dollars,  
02:37:28PM 17 \$2 million.

02:37:29PM 18 And, Judge, these are personal injury claims; who  
02:37:34PM 19 knows what a jury would award. Maybe it'd be way more, maybe  
02:37:39PM 20 it'd be way less, maybe it'd be a defense verdict. Those are  
02:37:43PM 21 just estimates based upon the plaintiffs' attorneys' assessment  
02:37:46PM 22 of his case. And they put that claim in, I'm sure, in good  
02:37:49PM 23 faith. But all it does in the end is define what the pro rata  
02:37:55PM 24 share will be for them when the dust settles and the  
02:38:00PM 25 disbursement happens with the rest of the recovered assets.

1           So, you know, I just don't -- I mean, and, again,  
2 they had a chance to go sue and try to get \$2 million, or a  
3 million dollars, or \$1.5 million, and they huddled with their  
4 attorneys and they decided, no, we want to come -- we want to  
5 come back into the bankruptcy -- because when he waived his  
6 discharge, they had not signed off on any settlement at that  
7 point yet. They will only a few days later, but -- and then  
8 they decided, no, we'll take what we can get in the bankruptcy.  
9 And I just -- that's how it really went down. That's how it  
10 went.

11           Since that time, Judge -- again, Dr. Schneider has  
12 pursued this ADR. I think it's going to be a great career,  
13 second career for him, because he can really help hospitals and  
14 administrators and physicians, based on his experience that  
15 hasn't all been good but that he's learned a ton from, and that  
16 I think he can actually have an income eventually from this,  
17 because he's a very energetic guy and somebody who -- he'll  
18 give his all to it. He's already written a book about it, and  
19 he's already preparing materials that can be presented in  
20 classwork for nursing students and other kinds of students, and  
21 medical students coming up through the system.

22           You know, he's also, Judge, using his experience from  
23 numerous medical missions to Latin America, working with his  
24 son, Brandon, to develop and operate a nonprofit that will send  
25 medical professionals into areas around the world when disaster

02:39:41PM 1 strikes, to put stethoscopes on the ground, so to speak, in a  
02:39:46PM 2 hurry, when and where they're needed most. Puerto Rico, for  
02:39:49PM 3 instance, after the last hurricane, comes to mind.

02:39:53PM 4 But perhaps the most rewarding thing that John is  
02:39:56PM 5 doing right now is -- and I've given you information about  
02:39:58PM 6 this, Judge, is doing the scuba diving with veterans, combat  
02:40:02PM 7 veterans. He finds amazing reward in that, because it is -- he  
02:40:09PM 8 can bring his -- not only his scuba diving experience, but also  
02:40:12PM 9 his medical, his neurological training to bear, because these  
02:40:18PM 10 folks are suffering from post-traumatic stress, they're  
02:40:22PM 11 suffering from horrific combat wounds and physical  
02:40:26PM 12 disabilities. And when he gets them in the water and it's  
02:40:28PM 13 quiet under water and they're able to float, free of gravity,  
02:40:32PM 14 you know, which is not like it is on land for them, and he's  
02:40:35PM 15 able to help them. And I've given you information that he's  
02:40:39PM 16 going to go forward with programs, and not just diving with  
02:40:42PM 17 them, but trying to help the people that are running these  
02:40:46PM 18 programs establish themselves to a greater extent.

02:40:50PM 19 You've got a lot of combat veterans coming back from  
02:40:53PM 20 the Middle East. I see them all the time in my criminal  
02:40:57PM 21 defense practice, because they are suffering. This is  
02:41:00PM 22 something that he can do and he can do in a specialized way  
02:41:04PM 23 that I think can make a really big impact in Southern  
02:41:07PM 24 California where these two groups are headquartered.

02:41:11PM 25 So I guess, Judge, over the past several years,

02:41:15PM 1 despite all the bad things that Mr. Rubich and others have to  
02:41:18PM 2 say about what he did before that, I think John is trying to  
02:41:21PM 3 show you that he's capable of changing, he's capable of  
02:41:25PM 4 redemption, he's capable of correcting his past wrongs, he's  
02:41:31PM 5 capable of helping others who are in dire need of help. He  
02:41:35PM 6 brings a multitude of skills to the table, as I've said, that  
02:41:38PM 7 enable him to really make a difference.

02:41:41PM 8 Judge, his post-defense rehabilitation is  
02:41:43PM 9 significant, is significant and extensive. And he has no  
02:41:48PM 10 substance abuse issues with which we deal all the time in the  
02:41:52PM 11 Criminal Justice System.

02:41:53PM 12 With all of this in mind, Judge, I'm asking that you  
02:41:56PM 13 sentence John to a period of five years probation, with a  
02:41:59PM 14 substantial community service component in lieu of a fine,  
02:42:02PM 15 leaving John to focus on his continuing work with the Dive Vets  
02:42:06PM 16 and the WAVES Project and to build his ADR business so that he  
02:42:11PM 17 can pay the remaining restitution. He owes the restitution to  
02:42:15PM 18 the estate, there's no question about it, so we expect that.  
02:42:19PM 19 He will pay 35,000 today, plus the hundred dollar assessment.

02:42:25PM 20 Judge, I'd ask that you waive the interest on the  
02:42:28PM 21 restitution, as it's a sizeable amount, even after the 35,000  
02:42:32PM 22 is paid, because that would just be very difficult to pay that  
02:42:37PM 23 and the principal, too.

02:42:42PM 24 Judge, John does want to address the Court and  
02:42:44PM 25 exercise his right to allocution, so I'd ask that you listen to

02:42:48PM 1 John now.

02:42:49PM 2 Thank you.

02:43:00PM 3 THE DEFENDANT: Your Honor, thank you for this  
02:43:01PM 4 opportunity to speak.

02:43:03PM 5 "I am so very sorry. Please know that, unlike what  
02:43:10PM 6 was represented, I do have absolute respect for the law and the  
02:43:14PM 7 bankruptcy rules. I am embarrassed and ashamed to have  
02:43:18PM 8 disrespected this process.

02:43:20PM 9 "I was wrong in failing to disclose a bank account  
02:43:23PM 10 and concealing money from the bankruptcy estate and my  
02:43:27PM 11 creditors. I understand it's an insult to a judicial  
02:43:31PM 12 proceeding which serves a very important function in our  
02:43:34PM 13 society.

02:43:34PM 14 "I'm not here to make excuses for my past behavior,  
02:43:39PM 15 but I want to let you know who I was and who, with convictions  
02:43:43PM 16 of my faith, I'm trying to become.

02:43:45PM 17 "I alone am responsible for this transgression. I've  
02:43:51PM 18 always had an unwavering commitment to the rules that govern  
02:43:54PM 19 our society, and I passed this on to my children. I have  
02:43:59PM 20 always been a law-abiding citizen before and after this  
02:44:02PM 21 criminal act. But there's no defense for my behavior. Yet, I  
02:44:09PM 22 would like to share with you the context in which I committed  
02:44:13PM 23 this crime.

02:44:13PM 24 "This was an incredibly stressful time in my life.  
02:44:18PM 25 The profound impact this stress had on my family and the

02:44:21PM 1 absolute threat, I felt, against my professional career did  
02:44:26PM 2 cause me to make several bad decisions, including  
02:44:30PM 3 misrepresentation of my bankruptcy finances. There's no  
02:44:34PM 4 justification for my actions. But the rest of my life  
02:44:39PM 5 demonstrated that my behavior in the bankruptcy was shamefully  
02:44:42PM 6 out of character. I've always tried to conduct myself as a  
02:44:45PM 7 gentleman and an officer above reproach. Any crime that I  
02:44:50PM 8 would be guilty of is at odds with my core values and has led  
02:44:56PM 9 to my psychological and spiritual reflection.

02:44:58PM 10 "Your Honor, I did not come from wealth and  
02:45:02PM 11 privilege. I worked incredibly hard for everything I've  
02:45:06PM 12 earned, sacrificed decades away -- decades of time away from my  
02:45:10PM 13 family. As a young, small, chubby boy in the '60s, I grew up  
02:45:14PM 14 in the rough streets of Irish Catholic South Boston at the  
02:45:17PM 15 hands of a predatory Catholic church. I was severely bullied  
02:45:22PM 16 and lived through physical and emotional abuse. In addition,  
02:45:25PM 17 my parents, God rest their soul, were strict Irish Germans and  
02:45:30PM 18 they could be ruthless with punishment. I buried all that  
02:45:34PM 19 psychological trauma and refused to acknowledge its effect.

02:45:39PM 20 "From those experiences, I did hold deep-seated scars  
02:45:46PM 21 and the seeds of anger and resentment toward anyone that I  
02:45:50PM 22 perceived a bully. As I matured and my challenges magnified,  
02:45:55PM 23 so did the intensity of my resolve for retribution when I or  
02:45:58PM 24 anyone close to me were again victims of tormenters or thugs.

02:46:03PM 25 "I do, Your Honor, hold honor, integrity and respect



1 for all that are so very important. These values are witnessed  
2 in my own children's behavior.

3 "Unfortunately, when my family and my career were  
4 under continuous threaten -- were continuous attack, threatened  
5 by vicious competitors at a time that I was so intense and so  
6 passionate about my vision, I ignored sound judgment. I let my  
7 anger and rage overwhelm my actions. I did behave very badly;  
8 escalating a conflict and then suffering the consequences of  
9 that unchecked fury. That was a childish and misguided  
10 crusade.

11 "As that dispute raged, Your Honor, I was heartbroken  
12 when the husband of one my employees who worked for me for  
13 years, people that I considered my medical family, died on my  
14 watch. I was happy that Kathy Monaco continued to work for me  
15 ten months after her husband died. We spoke frequently, and I  
16 did ask her many times to forgive mistakes that several people  
17 had made that caused that tragedy.

18 "Your Honor, I do have great compassion and empathy  
19 for all my patients and their families. I'm a parent, and I  
20 grieve for the children who lost parents at a young age.  
21 Compounding all of this was my desire to open the Omni Center  
22 after a massive financial and personal commitment.

23 "Your Honor, I haven't sought fortune and fame, but I  
24 did become obsessed and competitive. I had a vision for a  
25 suite of medical services in the region, and I did pursue it

1 with blinding passion. I overextended myself, and this caused  
2 my personal and professional life to implode under that strain.  
3 I burdened myself and my family with the constant stress. I  
4 was type A and intense and highly competitive, and, frankly, I  
5 didn't know how to handle shock and demoralization and the  
6 severe depression I felt during that time. Exhaustion and the  
7 pending doom I felt on my entire life clouded sound judgment  
8 and caused me to make a criminal mistake in my bankruptcy  
9 reporting.

10 "Your Honor, as a physician, I was privileged and  
11 honored to serve and save thousands of lives and improve the  
12 quality of life for so many. I personally operated and was  
13 responsible for over 17,000 patients. I was blessed with a  
14 technical gift and the skill to provide a very difficult  
15 medical service.

16 "I am profoundly disappointed that every patient  
17 didn't have a perfect outcome, and my practice was not free of  
18 complications and rabidity. Neurosurgery is an incredibly  
19 risky endeavor. Unfortunately, during all this litigation that  
20 occurred between 2012 and 2014, the fatigue, regret, and  
21 self-doubt I experienced overwhelmed any intelligent or logical  
22 reasoning. This was a time of absolute chaos for me and my  
23 family. I was overcome with anxiety and constant fear that  
24 still exists today. I pray for the turmoil to end. I simply  
25 don't want to fight it anymore.

02:49:53PM 1 "Your Honor, I actually believe the bankruptcy  
02:49:59PM 2 process would be a simple matter, and I'd be happy to answer  
02:50:02PM 3 questions about the insurance company issues that have been  
02:50:06PM 4 mischaracterized. But after filing bankruptcy, I thought I  
02:50:10PM 5 could easily move on, close the Billings chapter of my life,  
02:50:15PM 6 restart my medical practice and find some peace with my family.  
02:50:20PM 7 I was sure I could recover and purge what were truly bizarre  
02:50:25PM 8 and petty obsessions.

02:50:27PM 9 "I did not make the bankruptcy process simple,  
02:50:30PM 10 however. I sabotaged my goals and the bankruptcy process. I  
02:50:36PM 11 did want to keep funds out of the bankruptcy estate to care for  
02:50:41PM 12 my family until I could get back on my feet, so I put money in  
02:50:46PM 13 someone else's account, and I did try to cheat the process, and  
02:50:49PM 14 I did make Mr. Womack's job harder.

02:50:54PM 15 "Your Honor, I stand before you today a man in  
02:50:57PM 16 transformation. I've learned valuable lessons from all this  
02:51:01PM 17 conflict and this criminal act. My priorities are realigned  
02:51:04PM 18 and I'm blessed by His grace. And God isn't done with me yet.  
02:51:09PM 19 Having hit rock bottom with this criminal behavior, I know now  
02:51:13PM 20 where to find courage, guidance, and perseverance to be a  
02:51:18PM 21 righteous man. I did take a new field of study to help me  
02:51:21PM 22 understand my past, my past behavior over those difficult  
02:51:26PM 23 years, and it still guides me now.

02:51:28PM 24 "I returned to my neurosurgical practice helping as  
02:51:32PM 25 many people as I could, and I'm dedicated to live in peace,

02:51:36PM 1 supporting my family and repairing relationships that I  
02:51:39PM 2 strained.

02:51:40PM 3 "I only wish that someone who had learned the hard  
02:51:43PM 4 lessons that I have was there to mentor me during those  
02:51:47PM 5 difficult years. I now fully understand my misdeeds and  
02:51:50PM 6 recognize the feeling that blinded my behavior. Your Honor, I  
02:51:54PM 7 know I spurned the rules. And when I was arrested at church  
02:51:58PM 8 with my wife, that was a disgraceful reminder that I wasn't  
02:52:04PM 9 done repenting for my sins.

02:52:07PM 10 "Your Honor, I'm working hard to be the best reformed  
02:52:11PM 11 man I can; a man of character, temperance and integrity for my  
02:52:15PM 12 family, community and my God. The best I can do is heartfully  
02:52:20PM 13 acknowledge and apologize for my mistake, accept responsibility  
02:52:23PM 14 and make restitution.

02:52:25PM 15 "I am truly sorry, Your Honor. I can't undo the harm  
02:52:29PM 16 that I've caused the people I've cared about, and I carry that  
02:52:33PM 17 shame and responsibility with me every day. All I can do now  
02:52:36PM 18 is try to be a living testimonial atonement and hopefully make  
02:52:41PM 19 amends where I've hurt, reconstruct personal life damage by my  
02:52:47PM 20 mistakes, but always ashamed and humiliated as a criminal. I  
02:52:51PM 21 stand before you today, Your Honor, praying for the Court's  
02:52:54PM 22 leniency. This illicit experience has profoundly humbled me.  
02:53:01PM 23 Whatever you decide, Your Honor, I won't allow this failure to  
02:53:04PM 24 define my life.

02:53:06PM 25 "I'm working hard in my new profession, cautioned by

02:53:10PM 1 my own experience. I remain a dedicated servant to those less  
02:53:17PM 2 fortunate and in turmoil. I strive daily, reflecting in  
02:53:21PM 3 prayer, determined to be a good father, a good husband, and a  
02:53:24PM 4 good man. If anything, Your Honor, my life is a cautionary  
02:53:29PM 5 tale and I share it openly. But whatever you decide, Your  
02:53:34PM 6 Honor, I accept as my due punishment."

02:53:36PM 7 Thank you.

02:53:40PM 8 THE COURT: Well, the question before the Court today  
02:53:43PM 9 is what is a sufficient, but not greater than necessary  
02:53:48PM 10 sentence that will accomplish the purposes of sentencing, which  
02:53:52PM 11 include punishment, deterrence, protection of the public and  
02:53:56PM 12 rehabilitation. And the sentence needs to reflect the  
02:54:00PM 13 seriousness of the crime and promote a respect for the law.

02:54:02PM 14 In determining what is a sufficient, but not greater  
02:54:07PM 15 than necessary sentence, I consider not only the advisory  
02:54:09PM 16 sentencing guideline range but also the sentence provided for  
02:54:12PM 17 by statute and also the sentencing factors that are set forth  
02:54:17PM 18 in 18 United States Code Section 3553(a). And as I will  
02:54:24PM 19 explain, I find that a custodial sentence of 24 months,  
02:54:28PM 20 followed by a three-year term of supervised release with  
02:54:31PM 21 conditions does constitute a sufficient, but not greater than  
02:54:36PM 22 necessary sentence.

02:54:36PM 23 When I look at the 3553(a) factors, beginning with  
02:54:41PM 24 the nature and circumstances of the offense, it's a serious  
02:54:47PM 25 offense, it's a serious offense whenever anyone lies in a

02:54:55PM 1 federal court proceeding. And you lied, Dr. Schneider, and you  
02:55:05PM 2 lied multiple times, because you were given multiple  
02:55:11PM 3 opportunities to correct the original lie and did not ever  
02:55:17PM 4 choose to do that. And so concealment of these bankruptcy  
02:55:22PM 5 assets is now the crime that you are convicted of, and it's  
02:55:27PM 6 quite appropriate.

02:55:28PM 7 But looking at the circumstances of this particular  
02:55:32PM 8 case, which I think are somewhat unique, under the guidelines,  
02:55:39PM 9 I'm to consider the amount of harm that is done. And I think  
02:55:46PM 10 that the harm in this case is greater than the harm might be in  
02:55:55PM 11 a typical bankruptcy case where assets are concealed. And  
02:56:02PM 12 it's -- that's because of the nature of the creditors who were  
02:56:07PM 13 deprived of an opportunity to recover from you monies to make  
02:56:17PM 14 them whole again. I understand their claims have not been  
02:56:21PM 15 litigated. And despite Mr. Womack and Mr. Moyers' belief that  
02:56:29PM 16 you have admitted malpractice, that's not your position.

02:56:34PM 17 But in looking at who you were, your history and  
02:56:41PM 18 characteristics, which is also one of the 3553(a) factors,  
02:56:46PM 19 leading up to this bankruptcy fraud, I think that what you did  
02:56:56PM 20 as to the malpractice insurance account is a window into your  
02:57:04PM 21 character, at least at that point in time. I don't think that  
02:57:10PM 22 you can explain away to me that monies held for malpractice  
02:57:19PM 23 insurance could somehow be used to settle a claim for  
02:57:25PM 24 defamation is appropriate. I don't think that you -- well, I  
02:57:32PM 25 know my imagination won't be stretched that far.

1           So I believe you raided that fund to pay that  
2 settlement with Dr. Biles. And what that ended up doing is  
3 depriving these unsecured creditors of an opportunity to go  
4 through the normal course of things when they believe that they  
5 have suffered from medical malpractice, which is to bring a  
6 lawsuit in court, and to have a hope of recovering some money,  
7 if the jury agrees with their position, because they believe  
8 that doctors have medical malpractice insurance, and you  
9 represented that you did.

10           So I believe that that behavior, you're not on -- you  
11 know, you're not convicted of anything for that, but that gives  
12 me a window into the way that you were thinking in that period  
13 of time, which was, for whatever reason, was just about you and  
14 your own survival and not about other individuals. And if I  
15 understand the timeline correctly, Mr. Monaco had died by then.

16           Is that correct, Mr. Moyers? By the time he raided  
17 the insurance fund, had Mr. Monaco passed away?

18           JON MOYERS: We both believe that he was aware of the  
19 claim.

20           THE COURT: Right. That's what I heard one of you  
21 say, is Dr. Schneider would be aware of the claim prior to him  
22 raiding that insurance fund.

23           So, you know, I read the government's exhibit, which  
24 was quite enlightening, that is the -- I'm not exactly sure how  
25 these get published in the Pacific Reporter, but the opinion of

02:59:27PM 1 the Board of Professional Responsibility, which was actually a  
02:59:32PM 2 proceeding against your attorney, Mr. Stinson, for his  
02:59:37PM 3 professional misconduct, but it sets forth the facts  
02:59:42PM 4 surrounding that whole episode with Dr. Biles.

02:59:51PM 5 And thereto, Dr. Schneider, you exhibited a real lack  
03:00:01PM 6 of respect for legal process, for the law, for -- you know, you  
03:00:08PM 7 talk about being a man of honor. Well, when you take an oath  
03:00:12PM 8 to tell the truth and then you lie, that's not honorable,  
03:00:19PM 9 Dr. Schneider. And the facts are set out of this whole kind of  
03:00:25PM 10 sorted episode that led to Dr. Biles suing you, nothing is  
03:00:31PM 11 honorable about any of your conduct in that situation either,  
03:00:37PM 12 and, again, gives me kind of a window into how, at the time, at  
03:00:42PM 13 least, you think, or were thinking and the extent of your  
03:00:47PM 14 criminal thinking. And then, you know, when things, I guess,  
03:00:53PM 15 were kind of falling apart, but prior to the filing of the  
03:00:58PM 16 bankruptcy in 2013, you get your sister to open this bank  
03:01:03PM 17 account in her name and you deposit half a million dollars plus  
03:01:08PM 18 in that account. And despite the fact it's in her name, you  
03:01:14PM 19 have complete control over those funds.

03:01:16PM 20 And then the bankruptcy gets filed. At the time the  
03:01:20PM 21 bankruptcy is filed, you still have a little over \$300,000 in  
03:01:24PM 22 that account, but you lie on your financial forms in the  
03:01:29PM 23 bankruptcy and don't disclose that money to the bankruptcy  
03:01:34PM 24 trustee. And by lying to the trustee, you lie to the Court and  
03:01:41PM 25 cause that bankruptcy estate to incur hundreds of hours of



03:01:51PM 1 effort to try to locate all of your assets.

03:01:56PM 2 Now, Mr. Smith argues it's not all related to that  
03:02:00PM 3 account, and I think that's probably true. That makes sense to  
03:02:04PM 4 me. But I don't get the feeling that you were really very  
03:02:08PM 5 forthcoming when it came to various assets, Dr. Schneider. And  
03:02:15PM 6 so, again, your level of criminal thinking at the time, and  
03:02:21PM 7 your desire, really, there's no other way to say it but to  
03:02:25PM 8 defraud your creditors is pretty extreme.

03:02:34PM 9 And I remember at your change of plea, you know, we  
03:02:38PM 10 go through the offer of proof and -- at plea changes, and we  
03:02:45PM 11 did that at yours. Mr. Rubich read the offer of proof, and I  
03:02:49PM 12 asked you if you agreed with the offer of proof, and the  
03:02:55PM 13 only -- and when people don't, I write down what they disagree  
03:02:59PM 14 with.

03:03:00PM 15 And I must have asked you where the funds went after  
03:03:09PM 16 you -- after your sister closed the account and gave the funds  
03:03:15PM 17 from that account to you, and that's how I know, when I  
03:03:22PM 18 interjected earlier in this hearing, you told me that the funds  
03:03:26PM 19 went to your wife to put in your children's trust account, and  
03:03:34PM 20 that was after the bankruptcy was filed and ongoing. And you  
03:03:42PM 21 knew that you had this money, you knew you were supposed to  
03:03:45PM 22 disclose all of your assets. Then you get the money back from  
03:03:49PM 23 your sister. Do you tell anybody about it? No. You're still  
03:03:54PM 24 in that extreme criminal thinking. And you give it to your  
03:04:00PM 25 wife to put in your children's trust.

03:04:02PM 1           The home you live in is worth over \$2 million, but no  
03:04:07PM 2 one can touch it because you put it in a trust. And I don't  
03:04:12PM 3 begrudge your success at all, Dr. Schneider. More power to  
03:04:17PM 4 you. That's the American way. I don't begrudge your estate  
03:04:22PM 5 planning. But this -- you know, taking these funds in the  
03:04:27PM 6 midst of the bankruptcy and placing them -- first, you hide  
03:04:30PM 7 them, don't disclose them. Then when you get them back, you  
03:04:34PM 8 put them in a trust so nobody can have access to them. So  
03:04:38PM 9 there's just this continuing criminal thinking that's going on  
03:04:43PM 10 over a fairly long period of time. And now there's -- you  
03:04:52PM 11 know, there's nothing left as far as that money is concerned.

03:05:01PM 12           And, frankly, you come today with \$35,000; that's  
03:05:06PM 13 good. Something's better than nothing. But I had a guy last  
03:05:14PM 14 week who hardly has anything, but he had a house -- and he  
03:05:19PM 15 stole money from a local business -- and he sold his house to  
03:05:25PM 16 come with the \$94,000 worth of restitution that he owed. And  
03:05:32PM 17 he doesn't really have much other than that. He manages some  
03:05:37PM 18 mobile homes.

03:05:40PM 19           You could certainly have access to much greater  
03:05:45PM 20 assets to come in here with a check and pay your restitution  
03:05:49PM 21 today. I understand they're all in trust, but these trusts are  
03:05:53PM 22 managed by your wife, your children. And you could have the  
03:06:00PM 23 means by which to come in here and pay your restitution in full  
03:06:05PM 24 and really demonstrate, in good faith, how remorseful you are.  
03:06:15PM 25 Thirty-five thousand dollars is what you come with today.

03:06:19PM 1 I'm -- you know, you've made a statement today. In  
03:06:24PM 2 the presentence report you had an opportunity to submit a  
03:06:30PM 3 statement accepting responsibility, and it's set forth in  
03:06:35PM 4 paragraph 23 of the presentence report. I would have to say  
03:06:37PM 5 that there is very little in the way of any acceptance of  
03:06:43PM 6 responsibility in that very brief statement and absolutely no  
03:06:54PM 7 remorse expressed.

03:06:55PM 8 I mean, we can have the lowest or highest drug dealer  
03:06:58PM 9 in this courtroom, and they say -- I mean, and they're very  
03:07:00PM 10 sorry. They seem to understand what they've done and how  
03:07:04PM 11 they've negatively impacted their community. I don't really  
03:07:09PM 12 get that feeling from you, Dr. Schneider.

03:07:17PM 13 And, you know, it's been a while since this crime  
03:07:20PM 14 occurred. Maybe you have had time to contemplate the extent of  
03:07:26PM 15 the harm, and the extent of your criminal thinking, and lack of  
03:07:33PM 16 respect and flaunting of the judicial system, but I still think  
03:07:42PM 17 that you put you first. And without some real remorse, your  
03:07:57PM 18 ability to empathize with these creditors and so forth, it's  
03:08:04PM 19 not really been demonstrated to me. And I think it's only  
03:08:08PM 20 through that that people -- that they understand the  
03:08:13PM 21 far-reaching consequences of their criminal conduct that they  
03:08:16PM 22 can understand why they shouldn't be doing stuff like that.

03:08:26PM 23 And in this case, I think that a term of custody is  
03:08:33PM 24 appropriate. It avoids sentencing disparities. The individual  
03:08:40PM 25 who comes to mind is Angela Corson Smith, and she got 27 months

1 of custody, and she had about half as much restitution. But  
2 the lying and flaunting of the law and so forth, I think that  
3 this sentence achieves what the guidelines are set to achieve,  
4 which is a lack -- or which is disparity in sentencing.

5 I think that it reflects the seriousness of the  
6 offense, I hope it promotes a respect for the law in you, and  
7 it does provide a just punishment. You don't have any other  
8 criminal history, and I've taken that into consideration in  
9 giving you a low-end guideline sentence here today.

10 So it is the judgment of the Court that you be  
11 committed to the custody of the Bureau of Prisons for a term of  
12 24 months. And that upon your release from imprisonment, you  
13 shall be placed on supervised release for a term of three  
14 years.

15 I don't know if you've thought about any facility  
16 that you would like me to recommend to the Bureau of Prisons,  
17 Mr. Smith.

18 MR. SMITH: Yes, Judge. Thank you.

19 Taft Federal Correctional Institute, which is fairly  
20 near his family who will be able to visit him there. It's in  
21 Taft, California.

22 THE COURT: I will recommend the Bureau of Prisons  
23 place you at the Taft facility due to its proximity to your  
24 family.

25 And then upon of your release from imprisonment, you

03:10:24PM 1 shall be placed on supervised release for a term of three  
03:10:27PM 2 years.

03:10:27PM 3           Within 72 hours of your release from the custody of  
03:10:32PM 4 the Bureau of Prisons, you shall report in person to the  
03:10:35PM 5 probation office in the district to which you are released.

03:10:38PM 6           While on supervised release, you shall not commit any  
03:10:42PM 7 federal, state, or local crimes, and shall not possess a  
03:10:44PM 8 controlled substance.

03:10:44PM 9           You are prohibited from owning, using, or being in  
03:10:48PM 10 constructive possession of firearms, ammunition, or other  
03:10:52PM 11 destructive devices while on supervision and anytime after the  
03:10:56PM 12 completion of the period of supervision unless granted relief  
03:11:00PM 13 by the Secretary of the Treasury.

03:11:01PM 14           You shall cooperate in the collection of DNA as  
03:11:05PM 15 directed by your probation officer.

03:11:06PM 16           Further, you shall comply with the standard  
03:11:09PM 17 conditions of supervision as recommended by the United States  
03:11:14PM 18 Sentencing Commission and which have been approved by this  
03:11:16PM 19 court.

03:11:16PM 20           You shall also comply with the following special  
03:11:19PM 21 conditions:

03:11:19PM 22           You will provide your probation officer with any  
03:11:23PM 23 requested financial information and shall incur no new lines of  
03:11:27PM 24 credit without prior approval of your probation officer. You  
03:11:31PM 25 must notify your probation officer of any material changes in

1 your economic circumstances that might affect your ability to  
2 pay restitution, fines, or special assessments.

3 You shall pay restitution in the amount of \$308,945.  
4 You are to make payments at the rate of \$12,872.70 per month or  
5 as otherwise directed by your probation officer. Payments  
6 shall be made to the clerk of this court and shall be disbursed  
7 to Joseph Womack, Mr. Womack, who is the Chapter 7 Panel  
8 Bankruptcy Trustee.

9 You shall submit your person, residence, place of  
10 employment, vehicles and papers to a search, with or without a  
11 warrant, by any probation officer based on reasonable suspicion  
12 of contraband or evidence in violation of a condition of  
13 release. Failure to submit to search may be grounds for  
14 revocation. You shall warn any other occupants that the  
15 premises may be subject to searches pursuant to this condition.  
16 You shall allow seizure of suspected contraband for further  
17 examination.

18 What is most important to me -- two things, I guess,  
19 Dr. Schneider -- is some punishment, first off, and then  
20 restitution. And in an effort to get restitution paid more  
21 quickly, I'm, right or wrong, going to make a finding that you  
22 don't have the ability to pay a fine and waive the fine. But I  
23 am going to order that interest be paid on the restitution  
24 amount, because I do believe that you have the ability to pay  
25 interest on the amount as you go forward in your endeavors.

03:13:28PM 1 You are ordered also to pay to the United States a  
03:13:31PM 2 special assessment of \$100 which shall be due immediately.

03:13:36PM 3 During the period of your incarceration, you are  
03:13:38PM 4 ordered to pay criminal monetary penalty payments at the rate  
03:13:42PM 5 of not less than \$25 per quarter. Those payments shall be made  
03:13:47PM 6 through the Bureau of Prisons Inmate Financial Responsibility  
03:13:50PM 7 Program to clerk of this court.

03:13:55PM 8 And I think you have a motion as to some of these  
03:13:58PM 9 counts, Mr. Rubich.

03:13:58PM 10 MR. RUBICH: Yes, Your Honor.

03:13:58PM 11 Your Honor, at this time I would move to dismiss  
03:14:02PM 12 Counts I, II, IV, and V.

03:14:13PM 13 THE COURT: That motion is granted.

03:14:14PM 14 Mr. Smith, I understand, based on the plea agreement,  
03:14:19PM 15 that your client has waived his right to appeal his sentence;  
03:14:22PM 16 is that correct?

03:14:22PM 17 MR. SMITH: That is correct, Judge.

03:14:24PM 18 THE COURT: Any legal objection to the sentence,  
03:14:25PM 19 Mr. Rubich?

03:14:25PM 20 MR. RUBICH: No, Your Honor.

03:14:26PM 21 THE COURT: Any legal objection to the sentence,  
03:14:28PM 22 Mr. Smith?

03:14:29PM 23 MR. SMITH: No objection -- no legal objection to the  
03:14:31PM 24 sentence, Judge.

03:14:32PM 25 Before we end this hearing, I'd like to address

03:14:37PM 1 voluntary surrender whenever you're ready.

03:14:39PM 2 THE COURT: I'm ready right now.

03:14:41PM 3 MR. SMITH: Okay.

03:14:41PM 4 Judge, Dr. Schneider, as you said, has no criminal  
03:14:46PM 5 history whatsoever. He's been released pending all the  
03:14:48PM 6 proceedings in this case. He's never missed any court, he's  
03:14:52PM 7 always been very accessible to me and to the person who was not  
03:14:56PM 8 supervising him but that was kind of keeping track of him from  
03:15:00PM 9 the probation office, and I'd just ask that you allow him,  
03:15:03PM 10 under -- at his own expense and under his own power to report  
03:15:07PM 11 to wherever the Bureau of Prisons directs him to report when  
03:15:10PM 12 they send him the letter.

03:15:11PM 13 THE COURT: What's the government's position?

03:15:12PM 14 MR. RUBICH: Your Honor, this case is a very serious  
03:15:19PM 15 case, and my hesitation is twofold. When we initially indicted  
03:15:26PM 16 this individual, I put out a summons. And after he didn't show  
03:15:33PM 17 up for his initial appearance in court, I had no choice but to  
03:15:36PM 18 put out a warrant for his arrest. And apparently, according to  
03:15:39PM 19 him, it was because of logistical issues and he didn't know it  
03:15:42PM 20 was sent, but it gives me a distressed feeling. And, frankly,  
03:15:45PM 21 Your Honor, given the defendant's course of conduct in this  
03:15:53PM 22 case, I think that it's wholly appropriate that today he goes  
03:15:59PM 23 into custody and he starts his time. So I would recommend that  
03:16:04PM 24 he be arrested today.

03:16:07PM 25 THE COURT: Well, I of course knew this would come



03:16:10PM 1 up, this issue. And so what I was not clear about, given that  
03:16:15PM 2 the summons and that whole proceeding occurred before the  
03:16:20PM 3 magistrate judge, I did notice in CM/ECF that there was a  
03:16:28PM 4 summons issued, and there was a hearing set, and that I believe  
03:16:33PM 5 you moved to continue that hearing because service of the  
03:16:36PM 6 summons had not been accomplished. Is that correct?

03:16:39PM 7 MR. RUBICH: So, yes, Your Honor, there were a series  
03:16:42PM 8 of events.

03:16:42PM 9 THE COURT: Right. And I'm just trying to go through  
03:16:44PM 10 them.

03:16:39PM 11 MR. RUBICH: Yeah.

03:16:44PM 12 THE COURT: And if I understand correctly, you then  
03:16:47PM 13 asked for that hearing to be vacated, correct?

03:16:50PM 14 MR. RUBICH: Correct, Your Honor.

03:16:51PM 15 THE COURT: And, obviously, Dr. Schneider wasn't  
03:16:55PM 16 there. And if I understand correctly, you believed that the  
03:16:58PM 17 address that you had for service of the summons was incorrect.

03:17:03PM 18 MR. RUBICH: Initially, Your Honor. So it was sort  
03:17:05PM 19 of three-step process. The first time we served it on one  
03:17:08PM 20 of -- his former residence here in Montana; we realized that  
03:17:11PM 21 wasn't correct. Then we found -- you know, we realized it was  
03:17:13PM 22 the residence in California where he's, I presume, still living  
03:17:18PM 23 today, and that's where the -- during that second continuance,  
03:17:21PM 24 that summons was served. It was also not answered, and that is  
03:17:26PM 25 why eventually the warrant was issued.

03:17:28PM 1 MR. SMITH: Judge, may I?

03:17:30PM 2 THE COURT: Just a second. I'll let you respond.

03:17:32PM 3 So the July 11th, 2017, hearing was vacated.

03:17:37PM 4 MR. RUBICH: Yes.

03:17:38PM 5 THE COURT: You issued a new summons to his residence

03:17:40PM 6 in California.

03:17:41PM 7 MR. RUBICH: Correct, Your Honor.

03:17:42PM 8 THE COURT: And was that summons served?

03:17:44PM 9 MR. RUBICH: It was by registered mail, Your Honor,

03:17:47PM 10 but it was not responded to. So, in other words --

03:17:49PM 11 THE COURT: Meaning he didn't pick it up, or what?

03:17:51PM 12 MR. RUBICH: Correct, Your Honor, he didn't pick it

03:17:53PM 13 up.

03:17:56PM 14 THE COURT: And then -- so he didn't appear for the

03:18:01PM 15 arraignment on August 29th, 2017 --

03:17:51PM 16 MR. RUBICH: Correct, Your Honor.

03:18:10PM 17 THE COURT: -- as a result of that.

03:18:10PM 18 MR. RUBICH: Yes, Your Honor.

03:18:11PM 19 THE COURT: And then --

03:17:51PM 20 MR. RUBICH: I was given no course but to issue a

03:17:51PM 21 warrant.

03:18:12PM 22 THE COURT: -- you requested the arrest warrant.

03:18:14PM 23 MR. RUBICH: Yes.

03:18:15PM 24 THE COURT: Mr. Smith.

03:18:17PM 25 MR. SMITH: Judge, Dr. Schneider was not living in

03:18:20PM 1 Encinitas at the time; his wife was living there. Why his wife  
03:18:23PM 2 didn't go pick up a registered letter, I don't know, but she  
03:18:26PM 3 didn't. And he was not even aware that there was a registered  
03:18:29PM 4 letter to pick up. He was living in Iowa City, Iowa, working  
03:18:34PM 5 for the Veterans Administration and had no idea. He had no  
03:18:37PM 6 idea there was a summons or a warrant or anything of the sort  
03:18:40PM 7 until he was arrested walking out of church on a Sunday  
03:18:44PM 8 morning. So he had absolutely no control over that. Had he  
03:18:47PM 9 received a summons, he would have appeared in Montana before  
03:18:51PM 10 the court; I have no doubt of that.

03:19:04PM 11 THE COURT: Well, and I know I did look at the  
03:19:06PM 12 pretrial services report that would have been filed after his  
03:19:11PM 13 arraignment, then, and it indicated that he was living in Iowa  
03:19:15PM 14 and was not back in California. But I don't know, it was maybe  
03:19:22PM 15 six days in I don't know how long a period of time of  
03:19:25PM 16 something.

03:19:25PM 17 MR. SMITH: Pardon me?

03:19:25PM 18 THE COURT: He hadn't been back in California for a  
03:19:28PM 19 long time, and had only been there in California maybe a total  
03:19:32PM 20 of six days or something over a period of time.

03:19:35PM 21 MR. SMITH: True, Judge. He was working very hard as  
03:19:38PM 22 a neurosurgeon at the VA facility in Iowa City.

03:19:43PM 23 THE COURT: Okay. I'll allow you to self-surrender,  
03:19:50PM 24 Dr. Schneider. You'll receive a letter from the United States  
03:19:53PM 25 Marshals telling you what facility. Because I recommend Taft,

03:19:55PM 1 but that doesn't necessarily mean that's where you're going.

03:19:58PM 2 So they will send you a letter telling you where and when to  
03:20:02PM 3 appear. If you fail to appear as ordered, then a warrant will  
03:20:06PM 4 be issued for your arrest and the marshals will get you there.

03:20:09PM 5 We have a marshal here in the courtroom, and I'm sure  
03:20:13PM 6 he'll confirm the address where the letter can go. I don't  
03:20:18PM 7 want any excuses about you didn't get the letter.

03:20:21PM 8 Do you understand what I'm saying, Dr. Schneider?

03:20:24PM 9 THE DEFENDANT: Yes, Your Honor.

03:20:24PM 10 THE COURT: Where you are living is the address you  
03:20:27PM 11 give to the marshal here. And then when you get the letter,  
03:20:32PM 12 you comply with the directions contained therein.

03:20:36PM 13 THE DEFENDANT: I understand.

03:20:36PM 14 THE COURT: We're adjourned.

03:21:07PM 15 (Whereupon, the Court adjourned at 3:21 p.m.)

03:21:07PM 16 --oo0oo--

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## REPORTER'S CERTIFICATE

I, REBECCA M. SABO, a Registered Professional Reporter and Certified Realtime Reporter, certify that the foregoing transcript is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription; that after being reduced to typewriting, a certified copy of the transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Billings,  
Montana, this 29th day of August, 2018.

/s/ Rebecca M. Sabo

Rebecca M. Sabo, RPR, CRR  
United States Court Reporter